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THE PUBLIC HEALTH ACTS.

VOL. II.

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FIRST EDITION (1876) by W. G. LUMLEY, LL.M., Q.C., Counsel to the Local Government Board, and EDMUND LUMLEY, B.A., Barrister-at-Law.

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THE

PUBLIC HEALTH ACTS,

ANNOTATED,

WITH APPENDICES.

CONTAINING

The Various Incorporated Statutes and Orders of the Local Government Board, etc.

First Edition, Public Health Act, 1875, by

W. G. LUMLEY, LL.M., Q.C., and EDMUND LUMLEY, B.A.,
Counsel to the Local Government Board. *Of the Middle Temple, Barrister-at-Law.*

EIGHTH EDITION.

IN TWO VOLUMES.

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PAGE	NOTE	
1334	(*m*)	Add: *R.* v. *Middlesex C. C.* (*Clerk*), [1914] W. N. 250.
1395	(*u*)	*Whittington Gas Light and Coke Co.* v. *Chesterfield Gas and Water Board*, affirmed, [1914] 2 Ch. 146.
1417	(*s*)	Add: *Bristol Guardians* v. *Bristol Waterworks Co.*, [1914] A. C. 379.
1418	(*s*)	Add: *Hadham R. D. C.* v. *Crallan*, [1914] 2 Ch. 138.
1463	(*r*)	Add: *Donaghy* v. *Walsh*, [1914] 2 I. R. 261 (game of chance on automatic machine); *John Leng & Co., Ltd.* v. *Mackintosh*, [1914] S. C. (J.) 77 (betting forecast).
1491	(*c*)	Add: *Hadham R. D. C.* v. *Crallan*, [1914] 2 Ch. 138.
1556	(*rr*)	The case of *R.* v. *L. G. B., Ex parte Arlidge*, has now (July, 1914) been reversed in the House of Lords, but is not yet reported.
1589	(*r*)	See also *Marcus* v. *Crook*, *post*, p. 1974.
1630	(*n*)	Add: *Harrison* v. *Harrison*, (1914) 30 T. L. R. 532.
2150	(*c*)	Add: *Cowden* v. *McEvoy*, [1914] 3 K. B. 108.
2152	(*q*)	Add: *Schuck* v. *Banks*, [1914] 2 K. B. 491; 78 J. P. 229.
2155	(*s*)	Add: *Cowden* v. *McEvoy*, [1914] 3 K. B. 108.
2429		Housing and Town Planning Regulations, under Sect. 19 (7) should read Sect. 17 (7).

THE PUBLIC HEALTH ACTS.

APPENDIX I.

THE KNACKERS ACT, 1786.

(26 Geo. 3, c. 71.) (*a*)

An Act for Regulating Houses and other Places kept for the purpose of Slaughtering Horses.

Preamble.

Whereas the practice of stealing horses, cows and other cattle hath of late years increased to an alarming degree, and hath been greatly facilitated by certain persons of low condition who keep houses or places for the purpose of slaughtering horses and other cattle: For remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the twentieth day of July in the year of our Lord one thousand seven hundred and eighty-six, no person or persons shall keep or use any house or place for the purpose of slaughtering or killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat or other cattle which shall not be killed for butchers meat, without first taking out a licence for that purpose at the general quarter sessions held for the county, riding, city, town, district, division or liberty wherein such slaughtering house or place shall be situate; and the justices of the peace, at their general quarter sessions assembled, are hereby authorised and empowered to grant (*b*) such licences as aforesaid, upon a certificate (*c*), under the hands

From July 20th, 1786, every person keeping a slaughtering house to take out a licence, etc.

(*a*) This Act is amended by the 7 & 8 Vict. c. 87, *post*, p. 1307, and by the Protection of Animals Act, 1911, and repealed as to the metropolis by the P. H. (London) A., 1891, s. 142.

This Act provides for the knacker's personal licence.

See also as to the licensing of slaughter-houses and knackers' yards, ss. 125—131 of the Towns Improvement Clauses Act, 1847, *post*, pp. 1435 *et seq.*, incorporated by s. 169 of the P. H. A., 1875, *ante*, p. 388, and modified by ss. 29—31 of the P. H. A., 1890.

In London, outside the city the licensing of slaughter-houses and knackers' yards is provided for by s. 20 of the P. H. (London) A., 1891.

(*b*) The powers, duties, and liabilities of quarter sessions in relation to these licences are now transferred to the district or county borough council by the L. G. A., 1894, ss. 27 (2) and 32, *ante*, pp. 1010, 1013. Licences granted under this Act were limited to continue in force for one year only from their date by 7 & 8 Vict. c. 87, s. 1, *post*, p. 1307. Form of licence, see the Encyclopædia of Forms and Precedents, Vol. X., p. 391, No. 114. Power to cancel a licence is given by s. 2 of the same Act, *post*, p. 1307.

(*c*) This certificate is not required for the renewal of a licence when once it has been granted. See 7 & 8 Vict. c. 87, s. 1, *post*, p. 1307. Form of certificate, see the Encyclopædia of Forms and Precedents, Vol. X., p. 390, No. 113.

and seals of the minister and churchwardens or overseers, or of the minister and two or more substantial householders of the parish wherein the person or persons applying for such licence shall dwell, that such person or persons is or are fit and proper to be trusted with the management and carrying on such business as aforesaid: Provided always, that in case of the death of any person to whom such licence as aforesaid shall be granted, it shall and may be lawful for the widow, or personal representative of such person so dying, to carry on the said business until the then next ensuing general quarter sessions of the peace (*d*).

Justices to grant licences, which are to be entered, etc.

2. And . . . every such licence shall be signed by the justices of the peace assembled at such general quarter sessions or by the major part of them, and a copy of every such licence shall be entered in a book to be kept for that purpose by the clerk of the peace of the county wherein the same shall be so granted as aforesaid; and . . . all and every person and persons shall have liberty at all times (Sundays excepted), between the hours of ten and twelve of the clock in the forenoon, to search the office of such clerk of the peace wherein any such copy shall be entered or kept, and to make an extract or extracts from the same, paying for every such search the sum of sixpence; *and all and every person and persons so licensed as aforesaid shall cause to be painted or affixed over the door or gate of the house or place where he, she or they shall carry on the said business, in large legible characters, his, her and their name and names, with the words "Licensed for slaughtering horses, pursuant to an Act passed in the twenty-sixth year of his Majesty King George the Third"* (*e*).

Persons licensed to affix to their houses the words herein mentioned.

* * * * *

Persons slaughtering horses, etc. without licence, etc. guilty of felony.

8. And . . . if any person or persons keeping or using any such slaughtering house or place as aforesaid shall at any time from and after the twentieth day of July one thousand seven hundred and eighty-six slaughter any horse, mare or gelding, foal or filly, ass or mule, or any bull, cow, heifer, ox, calf, sheep, hog, goat or other cattle, for any other purpose than for butchers meat, or shall flay any horse, mare, gelding, foal, filly, ass, mule, bull, cow, heifer, ox, calf, sheep, hog, goat or other cattle brought dead to such slaughtering house or other place, without taking out such licence . . . such person or persons so offending in either of the said cases, being thereof convicted, shall be adjudged, deemed and taken to be guilty of felony . . . (*f*).

* * * * *

Penalty on persons lending houses for the purpose of slaughtering without licence.

13. And . . . if any person or persons shall occasionally lend any house, barn, stable or other place for the purpose of slaughtering or killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat or other cattle which shall not be killed for

(*d*) Apparently this proviso will now authorise the widow or personal representative in carrying on the business until the expiration of the licence at the end of the year for which it is issued.

(*e*) The conduct of a knacker's business is now regulated by ss. 5, 6, and Sched. I. of the Protection of Animals Act, 1911, replacing ss. 7—11 of the Cruelty to Animals Act, 1849, which the Act of 1911 repealed. The schedule requires (*inter alia*) that "the name of the knacker, together with the word 'knacker,' shall be painted or affixed in a conspicuous manner over the door or gate of the knacker's yard." The provision in the text upon this point may therefore be regarded as superseded: s. 7 of the Cruelty to Animals Act, 1849, which imposed a penalty for breach of it, is repealed as above mentioned.

(*f*) The punishment imposed by this section was fine and imprisonment and whipping, or transportation for not more than seven years. Penal servitude is substituted for transportation by 20 & 21 Vict. c. 3. Whipping for such an offence may be regarded as obsolete.

butchers meat without taking out such licence as aforesaid, and shall be thereof convicted before any justice of the peace for the county, riding, city, town, district, division or liberty wherein such person or persons shall reside, upon the oath of two credible witnesses, he, she or they shall forfeit, upon conviction, for every such offence, any sum not exceeding twenty pounds . . . one moiety thereof to be paid to the informer and the other moiety to the poor of the parish where the offence shall be committed, and which said last-mentioned moiety shall, upon payment thereof, be immediately transmitted by the justice so convicting to the overseers of the poor of the said parish or one of them; and in case such penalty shall not be forthwith paid, such justice shall commit the offender to the common gaol or house of correction . . . (*g*).

. . . . .

14. Provided always, that this Act shall not extend to any currier, felt-maker, tanner or dealer in hides who shall kill any distempered or aged horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat or other cattle, or purchase any dead horse, mare, gelding, colt, filly, ass, mule, ox, cow, heifer, calf, sheep, hog, goat or other cattle, for the bonâ fide purpose of selling, using or curing the hide or hides thereof in the course of their respective trades, nor to any furrier employed to kill aged and distempered cattle, nor to any person or persons who shall kill any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat or other cattle of their own, or other cattle, or purchasing any dead horse or other cattle to feed their own hounds or dogs, or giving away the flesh thereof for the like purpose.

Act not to extend to curriers, etc. killing distempered horses, etc.

* * * * *

18. [*General issue and treble costs.*] (*h*)

THE GAME ACT, 1831.

(1 & 2 Will. 4, c. 32.) (*i*)

An Act to amend the Laws in England (*k*) *relative to Game.*

[5th October 1831.]

* * * * *

2. The word "game" shall for all the purposes of this Act be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards (*l*).

Definition of "game" under this Act.

* * * * *

4. If any person licensed to deal in game by virtue of this Act as hereinafter mentioned shall buy or sell, or knowingly have in his house, shop,

Penalty on dealers in game buying, selling or possessing

(*g*) The remainder of this section, as well as the minimum penalty originally imposed thereby, is repealed by the S. J. A., 1884, s. 4.

(*h*) See now the Public Authorities Protection Act, 1893, *ante*, p. 963.

(*i*) See the L. G. A., 1894, ss. 27, 32, *ante*, pp. 1009, 1013.

(*k*) All the clauses and provisions of this Act and of 2 & 3 Vict. c. 35, relating to the granting of licences by justices to deal in game, and to the holding of special sessions for the purpose of granting such licences, and also all the clauses, provisions, and penalties contained in the said Acts or either of them relating to dealers in game and to the selling of game, either by or to such dealers or others, are extended to the whole of the United Kingdom by the Game Licences Act, 1860, s. 13.

(*l*) Note that deer, rabbits, quail, landrail, woodcock, snipe, geese, duck, pigeon, and plover are not included in this definition.

birds of game after ten days after expiration of season for killing, and on other persons buying or selling birds after ten days, or possessing them, except for breeding, after forty days.

stall, possession, or control, any bird of game (*m*) after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; or if any person not being licensed to deal in game by virtue of this Act as hereinafter mentioned, shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid, or shall knowingly have in his house, possession, or control any bird of game (except birds of game kept in a mew or breeding place) after the expiration of forty days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; every such person shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so bought or sold, or found in his house, shop, possession, or control, such sum of money, not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction (*n*).

* * * * *

Justices to hold a special session yearly for granting licences to persons to deal in game.

18. The justices of the peace of every county, riding, division, liberty, franchise, city, or town (*o*) shall hold a special session in the division or district for which they usually act, and in every year in the month of July (*p*),

(*m*) Alive or dead (*Loome* v. *Bailey* (1860), 25 J. P. 55; 3 El. & El. 444. Under an earlier Act which contained no provision as the ten days' grace, it was held that it was not an offence for a qualified person to have in his possession nine days after the commencement of the close season birds killed before its commencement (*Simpson* v. *Unwin* (1832), 3 B. & Ad. 134). It makes no difference whether the bird is tame or wild (*Harnett* v. *Miles* (1884), 48 J. P. 455). But now by s. 10 of the Revenue Act, 1911, "so much of s. 4 of the Game Act, 1831, as makes it an offence for any person to buy or sell, or have in his house, possession, or control game birds after the dates therein specified shall not apply where the game is live game, and the person buying, selling, or having in his house, possession, or control the game, is keeping or intending to keep the game solely for the purpose of breeding or for sale alive, and either is licensed at the time to deal in game, or is a holder of a certificate or licence to kill game in force at the time. The amendments made by this section shall have effect in the Game Act, 1831, as applied by any subsequent enactment, as well as in that Act as originally enacted." This provision relieved game breeders from a difficulty: if they were licensed to sell game, they could not lawfully keep their stock during the close season (s. 4); if they were not licensed, purchases from them were illegal: see *Cook* v. *Trevener*, [1911] 1 K. B. 9; 74 J. P. 469. See also *M'Lean* v. *Johnston*, [1913] S. C. (J.) 1. Game killed abroad is not within the section (*Guyer* v. *R.* (1889), 23 Q. B. D. 100; 53 J. P. 436. See, however, the Customs and Inland Revenue Act, 1893, s. 2, under which licences are required for dealing in imported game.

(*n*) As to forfeiture of the licence, see s. 22, *post*, p. 1305.

(*o*) The powers, duties, and liabilities of justices under this section are now transferred to district and county borough councils by ss. 27, 32 of the L. G. A., 1894, *ante*, pp. 1009, 1013.

(*p*) By 2 & 3 Vict. c. 35, s. 4, after reciting this enactment, and that it is expedient that justices should be empowered to hold a special session for the purpose of granting these licences not only in July but also at any subsequent period of the year, it is enacted that from and after the passing of this Act it shall be lawful for the said justices of the peace to hold in their respective divisions or districts a special session for the purpose of granting licences to deal in game, not only in the month of July, but also at any time and from time to time as often as they shall think fit after the said month of July in every year; and it shall also be lawful for the majority of the said justices (not being less than two) assembled at any such session or at any adjournment thereof, to grant licences to deal in game, in the manner directed by the said last-recited Act, and under and subject to the provisions and regulations thereof: Provided always, that of the holding of any such special session seven days' notice shall be given to each of the justices acting for the division or district in which such session is intended to be held: Provided also, that every licence to deal in game, at whatever time the same hath been or shall be granted, shall continue in force from the granting thereof until the first day of July then next following, and no longer, anything in the said last-recited Act or in such licence to the contrary notwithstanding.

Although the whole of the above Act, 2 & 3 Vict. c. 35, was repealed by the Revenue

for the purpose of granting licences to deal in game, of the holding of which session seven days notice shall be given to each of the justices acting for such division or district; and the majority of the justices assembled at such session, or at some adjournment thereof, not being less than two, are hereby authorised (if they shall think fit) to grant under their hands to any person being a householder or keeper of a shop or stall within such division or district, and not being an innkeeper (*q*) or victualler, or licensed to sell beer by retail (*r*), nor being the owner, guard, or driver of any mail coach or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a licence (*s*) according to the form in the Schedule (A.) annexed to this Act, empowering the person to whom such licence shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this Act, and also to sell the same at one house, shop, or stall only, kept by him; provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep a board having thereon in clear and legible characters, his Christian name and surname, together with the following words (that is to say), "Licensed to deal in game"; and every such licence granted in any succeeding year shall continue in force for the period of one year next after the granting thereof.

* * * * *

Proviso as to licences in case of partnership.

21. Provided always, that persons being in partnership, and carrying on their business at one house, shop, or stall only, shall not be obliged by virtue of this Act to take out more than one licence in any one year to authorise them to deal in game at such house, shop or stall.

Licences to become void on any conviction under this Act.

22. If any person licensed by virtue of this Act to deal in game shall during the period of such licence be convicted of any offence whatever against this Act, such licence shall thereupon become null and void (*t*).

* * * * *

Penalty on licensed dealers buying game from persons not authorised to sell, or otherwise offending;

28. If any person, being licensed to deal in game according to this Act, shall buy or obtain any game from any person not authorised to sell game for want of a game certificate, or for want of a licence to deal in game (*u*); or if any person, being licensed to deal in game according to this Act, shall sell or offer for sale any game at his house, shop, or stall, without such board

Act, 1869, s. 39, it is considered that the foregoing section remains in force by virtue of s. 13 of the Game Licences Act, 1860, cited, *ante*, p. 1303.

(*q*) Although an innkeeper may not be a licensed dealer in game, yet under s. 26 of this Act an innkeeper or tavern keeper may without this licence sell game for consumption in his own house, if he has procured it from a licensed dealer.

(*r*) Including the holder of an additional licence to sell beer under s. 1 of the Revenue Act, 1863 (*Shoolbred* v. *St. Pancras JJ.* (1890), 24 Q. B. D. 346; 54 J. P. 231); but such licences are no longer granted. A question has been raised, but not decided, whether a person being the owner of several establishments in different districts and holding a licence to sell beer in one of them can hold a licence to sell game in one or more of the other establishments. See *R.* v. *Bird* (1898), 62 J. P. 309.

(*s*) A modernised form of licence is given in Warry's Game Laws, 1896 ed., at p. 203. The licence must specify the particular house, shop, or stall at which the game is to be sold. Until this is done the excise licence required by s. 14 of the Game Licences Act, 1860, as amended by s. 17 of the Revenue (No. 2) Act, 1861, cannot be granted. A game dealer's licence is personal and cannot be transferred. There is no provision for the case of a licensed person dying during the year his licence is current. It would seem that the personal representative carrying on the business should apply for a fresh licence.

(*t*) There is no prohibition against an application by a convicted person for another licence. As to offences, see ss. 4, 28.

(*u*) It makes no difference whether he knew or not, when he purchased the game, that the seller was unlicensed (*R.* v. *Muirhead* (1887), 51 J. P. 760).

as aforesaid being affixed to some part of the outside of the front of such house, shop, or stall at the time of such selling or offering for sale, or shall affix or cause to be affixed such board to more than one house, shop, or stall, or shall sell any game at any place other than his house, shop, or stall where such board shall have been affixed; or if any person, not being licensed to deal in game according to this Act, shall assume, or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game; every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction.

and on unlicensed persons feigning to be licensed.

Servants of licensed dealer may buy and sell game.

29. Provided always, that the buying and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling in every case, where the same would have been lawful if transacted by such licensed dealer himself: Provided also, that nothing herein contained shall prevent any licensed dealer in game from selling any game which shall have been sent to him to be sold on account of any other licensed dealer in game.

One licensed dealer in game may sell on account of another.

* * * * *

47. [*Limitations of actions, etc.*] (*x*).

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SCHEDULE (A.).

FORM OF LICENCE.

At a special session of the justices of the peace of the county of [*or* riding, etc., *as the case may be*], acting for the division of [*or otherwise, as the case may be*] in the said county, holden at in the said on the day of in the year .

We , being justices acting for the said assembled at the said special session, do hereby authorise and empower *A. B.*, of [*here insert the name, description, and place of residence, and if more than one in partnership, say, C. D.*, of, etc., and *E. F.*, of etc., being partners], being a householder [*or* householders] [*or* keeper (*or* keepers) of a shop or stall, *as the case may be*], to buy game from any person authorised to sell game by virtue of an Act passed in the second year of the reign of King William the Fourth, intituled "An Act to amend the Laws in England relative to Game"; and we do also authorise and empower the said *A. B.*, [*or C. D.* and *E. F.*, being partners] to sell at his [*or* their] house [shop *or* stall] any game so bought, provided that the said *A. B.* [*or C. D.* and *E. F.*, being partners] shall affix to some part of the outside of the front of his [*or* their] house [shop *or* stall] and shall there keep, a board having thereon in clear and legible characters, his Christian name and surname [*or* their Christian names and surnames], together with the following words, "Licensed to deal in game."

This licence will expire on .

(Signed) , Justice of the Peace.
, Justice of the Peace.

(*x*) This section was repealed by the Public Authorities Protection Act, 1893, *ante*, p. 963.

THE KNACKERS ACT, 1844.

(7 & 8 VICT. c. 87.) (*y*)

An Act to amend the Law for regulating Places kept for Slaughtering Horses.
[9th August 1844.]

[**1.**] Every licence which shall be granted under or by virtue of the Knackers Act, 1786, authorising any person to keep or use any house or place for the purpose of slaughtering or killing any horse or other cattle (not killed for butcher's meat), shall be granted, and shall continue in force, for a period not exceeding one year from the date at which the same was granted, determinable as hereinafter provided: Provided nevertheless, that in the case of the renewal of any such licence to any person to whom any such licence may have been previously granted as aforesaid it shall not be necessary for such person to obtain or produce to the justices at such general quarter sessions of the peace (*z*) a certificate under the hands and seals of the minister, churchwardens, overseers, or householders, as required by the said last-mentioned Act. Licences to keep slaughter-houses granted under 26 Geo. 3, c. 71, to be annual.

2. It shall be lawful for the justices assembled at any general quarter sessions of the peace to be holden for any county (*z*), upon application and complaint made to them in writing by any person, and upon due proof being made to them that the party so complaining had given fourteen days previous notice in writing thereof to the clerk of the peace for such county, and also to the party complained against, and upon due proof to their satisfaction that any person so licensed as aforesaid has been guilty of any breach or violation of the said two several hereinbefore recited Acts or either of them, or of this Act, or any part or parts thereof respectively, to cancel and wholly put an end to any and every licence which may have been granted to the person or persons so complained against, and from thenceforth the same shall be of no force or effect. Justices in quarter sessions may cancel licences.

*   *   *   *   *

10. The words hereinafter mentioned, which in their usual signification have a more restricted or different meaning, shall in this Act (except where the nature of the provisions or the context of the Act shall exclude such construction) be interpreted as follows; (that is to say,) the word "county" shall include city, town, borough, cinque port, riding, liberty, or division; the word "horse" shall include mare, gelding, mule, pony, colt, or filly; the word "cattle" shall include bull, ox, cow, steer, heifer, calf, ass, sheep, lamb, goat, pig, or any other domestic animal; the word "constable" shall include headborough, peace officer, or police officer; and every word importing the singular number only shall extend and be applied to several persons and things as well as to one person or thing; and every word importing the masculine gender only shall extend to a female as well as a male. Meaning of certain words used in this A[ct].

(*y*) See 26 Geo. 3, c. 71, *ante*, p. 1301. This Act is repealed as to London by s. 142 of the P. H. (London) A., 1891. In London outside the City the licensing of slaughter-houses and knackers' yards is provided for by s. 20 of that Act.

(*z*) Now the district or county borough council. See ss. 27 (2) and 32 of the L. G. A., 1894, *ante*, pp. 1010, 1013.

THE POOR LAW AMENDMENT ACT, 1844.

(7 & 8 VICT. c. 101.) (*a*)

An Act for the further Amendment of the Laws relating to the Poor in England.
[9th August 1844.]

* * * * *

District auditors.

32. (*b*) . . . The said commissioners shall have all the powers with regard to *the salaries of the said auditors to be charged on the poor rates, and to* all other matters relating to auditors for such districts, as they have under the said first recited Act with regard to paid officers; and every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct (*c*) of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account, against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods, or chattels, found by him to be due from any person; and when any such auditor has so certified any money, books, deeds, papers, goods or chattels, to be due from any person, he shall forthwith report the same to the said commissioner ; and the person from whom any money is so certified to be due shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; and in the case of a union such money shall be applied by the guardians to the use of all or any of the parishes included in such union, according as all or any of such parishes may be interested in the sum so paid; and all books, deeds, papers, goods, and chattels, and in the case where there is no treasurer as aforesaid all moneys so certified to be due, shall be delivered over or paid, within seven days of the same being certified, to the person or persons authorised to receive the same; and if any such money, books, deeds, papers, goods, or chattels be not duly paid or delivered over as hereinbefore directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all moneys so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorising the illegal payment, or otherwise answerable for such moneys, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorised to receive the same, in the same manner as penalties and forfeitures may

Recovery of money due, books, etc., from accounting parties.

(*a*) The few sections of this Act which are set out here relate to the audit of accounts, and are incorporated by the P. H. A., 1875, ss. 247, 248, *ante*, pp. 541, 547. See also on the same subject, 11 & 12 Vict. c. 91; 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113; 42 & 43 Vict. c. 6, *post*, pp. 1474, 1476, 1493, 1688.

(*b*) The first sentence of this section as it originally stood in the Act was repealed by 42 Vict. c. 6. The next part, which referred to the election of auditors, was repealed by 31 & 32 Vict. c. 122, s. 24. The subsequent passage, being the first part of the section as above set out, was repealed by the S. L. R. A., 1874 (No. 2), in so far as it relates to the power of the commissioners with regard to the salaries of auditors.

(*c*) Employment of solicitors by resolution to prepare contracts for building labourers' cottages was held in an Irish case not to be negligence or misconduct on the part of rural district councillors who were parties to the resolution though they were or might be persons accounting (*R.* (*Kennedy*) v. *Browne*, [1907] 2 I. R. 505). Joining in the resolution to employ is not an authorisation to pay (*R.* (*O'Leary*) v. *Calvert*, [1898] 2 I. R. 266, and *R.* (*Kennedy*) v. *Browne, supra*). See further on this subject, p. 547, *ante*.

be recovered under the provisions of the said first recited Act (*d*); and the expenses attending such proceeding or recovery shall (except so far as the same may be paid by the person against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged in their accounts in such manner and in such proportions as the said commissioners may direct; and if any person from whom any such books, deeds, papers, goods, or chattels may be due neglect or refuse to deliver over the same to the person for the time being entitled or authorised to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorised to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things, in their hands . . . (*e*).

33. . . . And it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor's rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury (*f*).

Declaration as to accounts.

* * * * *

35. If any person aggrieved by any allowance, disallowance, or surcharge by any such auditor require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made (*g*); and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorised to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining

Auditor's allowances, disallowances, surcharges, may be removed into Court of Queen's Bench by *certiorari*.

(*d*) 4 & 5 Will. 4, c. 76, s. 99. That Act enables penalties and forfeitures to be levied upon conviction by distress and sale of the offender's goods, and in default of distress by commitment to prison for a term not exceeding three months. But a balance certified by the auditor is a debt only, and is barred by the bankruptcy of the debtor (*R.* v. *Master*, *ante*, p. 547). The sum certified is still to be recovered as a poor rate (47 & 48 Vict. c. 43, s. 11), that is to say, by distress and imprisonment under the Distress for Rates Act, 1849. The justices act ministerially in enforcing the auditor's decision, and cannot inquire into the legality thereof (*R.* v. *Linford* (1857), 21 J. P. 435; 7 El. & Bl. 950; *R.* v. *Finnis* (1859), 1 El. & El. 935; 28 L. J. M. C. 201. As to their discretion in awarding costs, see *R.* v. *Baker, Ex parte Guildford Overseers* (1909), 73 J. P. 166; 100 L. T. 522. But the court will not compel justices to issue there warrant if there is an appeal pending against the disallowance (*R.* v. *Denbighshire JJ.* (1876), 33 L. T. (o.s.) 145). See also as to the discretion of the court in compelling justices to enforce an auditor's certificate, *R.* v. *Brecknockshire JJ.* (1857), 21 J. P. 356; 7 El. & Bl. 951).

(*e*) The concluding part of this section is inapplicable for the purposes of this work, and is, therefore, omitted. For the like reason the first part of s. 33 is also omitted here.

(*f*) Section 34 applies only to poor law officers.

(*g*) It is not essential to the validity of an auditor's certificate surcharging a guardian that it should have been signed at a session of the audit to which the public had access (*R.* v. *Local Government Board* (1909), 73 J. P. 186; 100 L. T. 434). See further on this subject, p. 547, *ante*

in his hands, to apply to the Court of Queen's Bench for a writ of certiorari (*h*) to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of certiorari for the removal of orders of justices of the peace (*i*), except that the condition of such recognizance shall be to prosecute such certiorari, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary (*k*); and on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such court that the decision of the said auditor was erroneous (*l*), they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such certiorari to be paid by the parish or union to which such accounts relate as to such court may seem fit; which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable.

O persons aggrieved may apply to commissioners, who may issue orders for determining questions.

36. Provided always, that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the Court of Queen's Bench for a writ of certiorari, to apply to the said commissioners (*m*) to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein, under their hands and seal, as they may deem requisite for determining the question.

* * * * *

(*h*) The writ is granted *ex debito justitiæ* to a party aggrieved. See *per* PALLES, C.B., in *R.* (*O'Leary*) v. *Calvert*, [1898] 2 I. R. 511; *R.* v. *Surrey JJ.* (1870), L. R. 5 Q. B. 466, and *per* LORD BLACKBURN in *Julius* v. *Bishop of Oxford* (1880), 5 App. Cas., at p. 246.

(*i*) There is no recognizance in use in Ireland "in respect of persons suing for writs of *certiorari* for the removal of orders of justices of the peace." Nevertheless the court has jurisdiction to stay the order for a writ of *certiorari* under a similar section (Local Government (Ireland) Act, 1871, s. 12) until the prosecutor has entered into and perfected an effective recognizance, with or without securities, as the exigency of the case may require (*R.* (*Currid*) v. *Baker*, [1910] 2 I. R. 187).

(*k*) As to costs, see *R.* v. *G. W. Rail. Co.* (1849), 13 Q. B. 327.

(*l*) The court can review the decision of the auditor not only when it is erroneous in point of law, but erroneous in any sense (*per* CAVE, J., in *R.* v. *Hazlehurst* (1887), 51 J. P. 645; *per* PALLES, C.B., in *R.* (*O'Leary*) v. *Calvert*, [1898] 2 I. R. 266; *R.* v. *Newell*, [1903] 2 I. R., at pp. 341, 342; *R.* v. *Carson Roberts*, [1908] 1 K. B. 407; 72 J. P. 81; and *R.* (*Butler*) v. *Browne*, [1909] 2 I. R. 333. The auditor's decision upon a joint account, such as that of overseers under this Act, may be reversed and the disallowance or surcharge remitted in favour of some or one only of the accounting parties. See 39 & 40 Vict. c. 61, s. 38.

(*m*) The appeal was, by 21 & 22 Vict. c. 98, s. 60, transferred to the Secretary of State, for whom the L. G. B. were substituted by 34 & 35 Vict. c. 70, *post*, p. 1555, and this provision is retained in the P. H. A., 1875, s. 247, *ante*, p. 541.

THE COMPANIES CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 16.) (*n*)

An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public nature. [8th May 1845.]

* * * * *

2. And with respect to the construction of this Act, and of other Acts to be incorporated therewith, be it enacted as follows (*o*) : Interpretation.

The expression " the special Act " used in this Act shall be construed to mean any Act which shall be hereafter passed incorporating a joint stock company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid ; and the word " prescribed " used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act ; and the sentence in which such word shall occur shall be construed as if instead of the word " prescribed " the expression " prescribed for that purpose in the special Act " had been used ; and the expression " the undertaking " shall mean the undertaking or works, of whatever nature, which shall by the special Act be authorised to be executed. "The special Act." "Prescribed." "The undertaking."

3. The following words and expressions both in this and the special Act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction ; (that is to say,) (*o*) Interpretations in this and the special Act :

Words importing the singular number only shall include the plural number ; and words importing the plural number only shall include the singular number : Number.

Words importing the masculine gender only shall include females : Gender.

The word " lands " shall extend to messuages, lands, tenements, and hereditaments, of any tenure : "Lands."

The word " lease " shall include an agreement for a lease : "Lease."

The word " month " shall mean calendar month : "Month."

The expression " superior courts " shall mean her Majesty's superior courts of record at Westminster . . . (*p*). "Superior courts."

The word " oath " shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath : "Oath."

The word " county " shall include any riding or other like division of a county, and shall also include county of a city or county of a town : "County."

The word " justice " shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where any matter shall be authorised or required to be done by two justices the expression " two justices " shall be understood to mean two justices assembled and acting together in petty sessions : "Justice." "Two justices."

The expression " the company " shall mean the company constituted by the special Act : "The company."

(*n*) Certain of the sections of this Act are incorporated by some of the Acts included in this Appendix ; for example, by the Baths and Washhouses Act, 1846, s. 23. Only the sections so incorporated are here set out, but ss. 2 and 3 are also included in the present work, as these are necessary for reference in construing the incorporated sections.

(*o*) These clauses must be read in connection with the sections of the several Acts by which this Act is incorporated, as the interpretations here given are in some instances qualified.

(*p*) Words relating to Ireland only are here omitted.

"Directors." The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name:

"Shareholder." The word "shareholder" shall mean shareholder, proprietor, or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: and

"Secretary." The expression "secretary" shall mean the secretary of the company, and shall include the word "clerk."

* * * * *

Power to borrow money.

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows (*q*):

Power to borrow money.

38. If the company be authorised by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorised to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Power to re-borrow.

39. If, after having borrowed any part of the moneys so authorised to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them agafn to borrow the amount so paid off, and so from time to time; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so re-borrowed in order to pay off any existing mortgage or bond.

Evidence of authority for borrowing.

40. Where by the special Act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special Act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorising the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

Mortgages and bonds to be stamped.

41. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the Schedule (C.) (*r*) or (D.) to this Act annexed, or to the like effect.

Rights of mortgagees.

42. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such

(*q*) Sections 38—55 inclusive are incorporated by the Baths and Washhouses Act, 1846, s. 23, *post*, p. 1377.

(*r*) See *Legg* v. *Mathieson* (1860), 29 L. J. Ch. 385; 2 L. T. 112; *Holdsworth* v. *Davenport* (1877), 3 Ch. D. 185. If the consideration is apparent the instrument is not void merely because the consideration is not in terms stated (*Landowners West of England and South Wales Land Drainage and Inclosure Co.* v. *Ashford* (1881), 16 Ch. D. 411.

mortgagees, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorised (*s*).

43. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company. Application of calls notwithstanding mortgages.

44. The respective obligees in such bonds shall, proportionally, according to the amount of the moneys secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorised, or otherwise howsoever. Rights of obligees.

45. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward. Register of mortgages and bonds.

46. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (E.) to this Act annexed, or to the like effect. Transfers of mortgages and bonds to be stamped.

47. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage. Transfers of mortgages and bonds to be registered.

48. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto and in preference to any dividends payable to the shareholders of the company (*t*). Payment of interest on moneys borrowed.

(*s*) See *Land Owners West of England, etc. Co.* v. *Ashford*, *ante*, p. 1312.

(*t*) As to interest not provided for by the security, see *Price* v. *G. W. Rail. Co.* (1857), 16 L. J. Ex. 87; 16 M. & W. 244. Though interest be payable half-yearly, it accrues due *de die in diem*, and is therefore subject to apportionment (*In re Rogers* (1861), 30 L. J. Ch. 153; 3 L. T. 397).

Transfers of interest to be stamped.

49. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

Repayment of money borrowed at a time fixed.

50. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment of money borrowed where no time fixed.

51. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London or Dublin Gazette, according as the principal office of the company shall be in England or Ireland, and in some newspaper, as after mentioned.

Interest to cease on expiration of notice to pay off mortgage or bond.

52. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrears of interest, when to be enforced by appointment of a receiver.

53. Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or, if his debt does not amount to the prescribed sum he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of principal and interest.

Appointment of receiver.

54. Every application for a receiver in the cases aforesaid shall be made to two justices, and on every such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some

person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

55. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward. Access to account books by mortgagees.

* * * * *

And with respect to the accountability of the officers of the company be it enacted as follows (*u*): *Accountability of officers.*

109. Before any person intrusted with the custody or control of moneys, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office. Security to be taken from officers intrusted with money.

110. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account, in writing under his hand, of all moneys received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose, such moneys shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts. Officers to account, on demand.

111. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence, upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer or upon evidence, or upon inspection of the account, that any moneys of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to Summary remedy against parties failing to account.

(*u*) Sections 109—114 inclusive are incorporated by the Baths and Washhouses Act, 1846, s. 23, *post*, p. 1377.

remain without bail for a period not exceeding three months, unless the same be sooner paid.

Officers refusing to deliver up documents, etc., to be imprisoned.

112. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Where officer about to abscond, a warrant may be issued in the first instance.

113. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail, to the satisfaction of such justice, for his appearance before such justices to answer the complaint of the company.

Sureties not to be discharged.

114. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

* * * * *

Byelaws.

And with respect to the making of byelaws, be it enacted as follows (*x*):

Power to make byelaws for the officers of the company.

124. It shall be lawful for the company from time to time to make such byelaws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such byelaws, and make others, provided such byelaws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such byelaws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such byelaws shall be given to every officer and servant of the company affected thereby.

Fines for breach of such byelaws.

125. It shall be lawful for the company, by such byelaws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such byelaws, as the company think fit, not exceeding five pounds for any one offence.

Byelaws to be so framed as that penalties may be mitigated.

126. All the byelaws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if such justice shall think fit.

(*x*) Sections 124—127 inclusive are incorporated by the Baths and Washhouses Act, 1846, s. 23, *post*, p. 1377, subject, however, to the provisions of s. 34 of that Act, *post*, p. 1380.

127. The production of a written or printed copy of the byelaws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such byelaws in all cases of prosecution under the same. Evidence of byelaws.

*   *   *   *   *

And with respect to the recovery of damages not specially provided for, and penalties, be it enacted as follows (*y*) : *Recovery of damages and penalties.*

142. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly. Provision for ascertainment of damages not otherwise provided for. Enforcement by distress.

143. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses, payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same. Distress against the treasurer. Notice to treasurer. Reimbursement of treasurer.

144. Where in this or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof. Method of proceeding before justices in questions of damages, etc.

145. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed on paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal Publication of penalties.

(*y*) Sections 142—160 inclusive are incorporated by the Baths and Washhouses Act, 1847, s. 23, *post*, p. 1377. They are almost identical with ss. 136—140 of the Lands Clauses Consolidation Act, 1845, *post*, p. 1366. This part of the Act is printed as it remains unrepealed. The sections and parts of sections repealed were repealed by the S. J. A., 1884, s. 5 of which provides for the substitution of the procedure under the S. J. Acts, 1848 and 1879.

place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

146. If any person shall pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any byelaw or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

147. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices . . .

148. [*Penalties may be levied by distress. Repealed by Summary Jurisdiction Act*, 1884.]

149. [*Imprisonment in default of distress. Repealed as above.*]

Distress, how to be levied.

150. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained (*z*).

Distress not unlawful for want of form, etc.

151. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

152. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish . . . (*a*).

153. [*Penalties to be sued for within six months. Repealed by the Summary Jurisdiction Act*, 1884. *See now the Summary Jurisdiction Act*, 1848, *s.* 11.]

Damage to be made good in addition to penalty.

154. If, through any act, neglect, or default, on account whereof any person shall have incurred any penalty imposed by this or the special Act, or any Act incorporated therewith, any damage to the property of the company

(*z*) See the S. J. A., 1879, s. 43; and as to demand before proceeding to recover overplus, *Simpson* v. *Routh* (1833), 2 L. J. K. B. 163; 2 B. & C. 682; *Philp* v. *Donati* (1809), 2 Taunt. 62.

(*a*) The remainder of this section is repealed by the S. L. R. A., 1875. As to the appropriation of these penalties in boroughs having a separate court of quarter sessions, see the Municipal Corporations Act, 1882, s. 221.

shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

155. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, or any Act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (*b*). Penalty on witnesses making default.

156. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender. Transient offenders.

157. [*Form of conviction. Repealed by Summary Jurisdiction Act*, 1884.]

158. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts. Proceedings not to be quashed for want of form, etc.

Appeal.

159. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions . . . (*c*). Parties allowed to appeal to quarter sessions on giving security.

160. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may conform or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable. Court to make such order as they think reasonable.

* * * * *

SCHEDULES referred to by the foregoing Act.

* * * * *

(*b*) This section is repealed as to England and Wales so far as relates to any matter to which the S. J. Acts apply (47 & 48 Vict. c. 43, s. 4).
(*c*) See S. J. Acts, 1879, s. 31, and 1884, s. 6.

SCHEDULE (C.) (*d*).

FORM OF MORTGAGE DEED.

"The Company."

Mortgage, Number . £

By virtue of [*here name the special Act*] we, "The Company," in consideration of the sum of pounds paid to us by *A. B.*, of , do assign unto the said *A. B.*, his executors, administrators, and assigns, the said undertaking, [and (*in case such loan shall be in anticipation of the capital authorised to be raised*) all future calls on shareholders,] and all the tolls and sums of money arising by virtue of the said Act, and all the estate, right, title, and interest of the company in the same, to hold unto the said *A. B.*, his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of years from the date hereof (*in case any period be agreed upon for that purpose*)] [at , *or any place of payment other than the principal office of the company*].

Given under our common seal, this day of , in the year of our Lord .

SCHEDULE (D.) (*d*).

FORM OF BOND.

"The Company."

Bond, Number . £

By virtue of [*here name the special Act*], we, "The Company," in consideration of the sum of pounds to us in hand paid by *A. B.*, of , do bind ourselves and our successors unto the said *A. B.*, his executors, administrators, and assigns, in the penal sum of pounds.

The condition of the above obligation is such, that, if the said company shall pay to the said *A. B.*, his executors, administrators, or assigns, [at (*in case any other place of payment than the principal office of the company be intended*),] on the day of which will be in the year one thousand eight hundred and , the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly on the day of and day of , then the above-written obligation is to become void, otherwise to remain in full force.

Given under our common seal, this day of one thousand eight hundred and .

SCHEDULE (E.) (*e*).

FORM OF TRANSFER OF MORTGAGE OR BOND.

I, *A. B.*, of , in consideration of the sum of paid to me by *G. H.*, of , do hereby transfer to the said *G. H.*, his executors, administrators, and assigns, a certain bond [*or* mortgage] number , made by "The Company," to , bearing date the day of , for securing the sum of , and interest, [*or, if such transfer be by endorsement*, the within security,] and all my right, estate, and interest in and to the money thereby secured [*and if the transfer be of a mortgage*, and in and to the tolls, money, and property thereby assigned].

In witness whereof I have hereunto set my hand and seal, this day of one thousand eight hundred and .

* * * * *

(*d*) See s. 41, *ante*, p. 1312.

(*e*) See s. 46, *ante*, p. 1313.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 18.) (*f*)

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public nature.

[8th May 1845.]

Act to apply to all undertakings authorised by Acts hereafter to be passed.

[**1.**] This Act shall apply to every undertaking authorised by any Act which shall hereafter (*g*) be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act (*h*).

Interpretation.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

"Special Act." "Prescribed." "The works." "Promoters of the undertaking."

2. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking (*i*).

Interpretations in this and the special Act.

3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number: — Number.

Words importing the masculine gender only shall include females: — Gender.

(*f*) This Act is incorporated with the P. H. A., 1875, s. 176, *ante*, p. 415, except as therein mentioned. It is also incorporated with other Acts included in this Appendix, *e.g.*, the Baths and Washhouses Act, 1847, s. 4, *post*, p. 1438. It is amended by 23 & 24 Vict. c. 106; 46 & 47 Vict. c. 15; 58 & 59 Vict. c. 11, *post*, pp. 1484, 1763, 1901.

(*g*) See, as to a corporation incorporated before 1845, but empowered to take lands under later Acts, *In re Mills' Estate* (1887), 34 Ch. D. 24; 51 J. P. 151. A private charity incorporated by charter is not an undertaking of a public nature within the meaning of this Act (*Re Sion College* (1888), 57 L. T. (N.S.) 743).

(*h*) The preamble and part of s. 1 were repealed by the S. L. R. A., 1891.

(*i*) As to the meaning of these expressions when read as incorporated with the P. H. A., 1875, see s. 316 of that Act, *ante*, p. 649.

"Lands." The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure (*k*):

"Lease." The word "lease" shall include an agreement for a lease:

"Month." The word "month" shall mean calendar month:

"Superior courts." The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster . . . (*l*):

"Oath." The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County." The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"Sheriff." "Clerk of the peace." The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

"Justices." The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, "Two justices." the expression "two justices" shall be understood to mean two justices assembled and acting together:

"Owner." Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

"The Bank." The expression "the Bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England . . . (*l*).

Short title of the Act. **4.** In citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845" (*m*).

(*k*) It seems to be doubtful whether the definition includes incorporeal hereditaments, such as easements. See *G. W. Rail. Co.* v. *Swindon, etc. Rail. Co.* (1884), 9 App. Cas. 787; 48 J. P. 921; and *per* VAUGHAN WILLIAMS, L. J., in *Re City and South London Railway and St. Mary Woolnoth*, [1903] 2 K. B. at p. 737. Compare the definition in the P. H. A., 1875, s. 4, *ante*, p. 7; and see s. 176, *ante*, p. 415, and notes.

(*l*) Words relating to Ireland only are omitted here.

(*m*) The expression "Lands Clauses Act" is sanctioned by the Interpretation Act, 1889, s. 23.

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: Be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

Form in which portions of this Act may be incorporated with other Acts.

And with respect to the purchase of lands by agreement, be it enacted as follows:

Purchase of lands by agreement.

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever (*n*).

Power to purchase lands by agreement.

7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail (*o*) or for life (*p*), married women seised in their own right (*q*) or entitled to dower, guardians, committees of lunatics and idiots (*r*), trustees or feoffees in trust for charitable or other purposes, executors and administrators (*s*), and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully

Parties under disability enabled to sell and convey.

(*n*) See *Errington* v. *Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559. A person having a mere possessory title, good against every one but the lawful owner and in course of becoming absolute as against him, has a primâ facie right to compensation (*Perry* v. *Clissold*, [1907] A. C. 73).

The promoters cannot bind themselves not to use their statutory powers in respect of any portion of the lands taken, even though the owner agrees to accept a smaller sum by way of compensation in consideration of a restriction in the conveyance on the user of the lands (*Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623; *Re S. E. Rail. Co. and Wiffin's Contract*, [1907] 2 Ch. 366). And see *Stourcliffe Estate Co., Ltd.* v. *Bournemouth Corporation*, [1910] 2 Ch. 12; 74 J. P. 289.

(*o*) Even if the estate tail is inalienable; but this statute does not extend to the Crown (*In re Cuckfield Burial Board* (1856), 19 Beav. 153).

(*p*) But if equitable, the trustees must join in the conveyance (*Lippincott* v. *Smyth* (1860), 29 L. J. Ch. 520; 2 L. T. (N.S.) 79).

(*q*) The trustees of land for married women, who are absolutely entitled for their separate use, cannot contract to sell under this section (*Peters* v. *Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429).

(*r*) Note that only the committee, not the lunatic, can sell. See *Re Tugwell* (1884), 27 Ch. D. 309).

(*s*) This means executors and administrators who are seised, possessed of, or entitled to land or any estate or interest therein, and not executors or administrators who have only a power of sale (*Re Barrow-in-Furness Corporation and Rawlinson's Contracts*, [1903] 1 Ch. 339).

be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Parties under disability to exercise other powers.

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the Bank.

9. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party (*t*), and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned (*u*).

Where vendor absolutely entitled, lands may be sold on chief rents.

10. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rent-charge payable by the promoters of the undertaking, *but, except as aforesaid,*

(*t*) The surveyor must not be the party himself (*Peters* v. *Lewes, etc. Rail. Co., ante*, p. 1323).

(*u*) See s. 69, *post*, p. 1340. The declaration in writing is necessary before a claim can be made for specific performance (*Bridgend Gas and Water Co.* v. *Dunraven* (1886), 31 Ch. D. 219).

the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum (*x*).

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties (*y*), and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking (*z*).

Payment of rents to be charged on tolls.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

Power to purchase lands required for additional accommodation.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

Authority to sell and re-purchase such lands.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes (*a*), purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Restraint on purchase from incapacitated persons.

(*x*) So much of this section as provides that, save in the case of lands of which any person is seised in fee, or entitled to dispose absolutely for his own benefit, the consideration to be paid for any lands or for any damage done thereto shall be in a gross sum, was repealed by 23 & 24 Vict. c. 106, s. 1. The power to sell for an annual rent-charge provided by this section is extended by 23 & 24 Vict. c. 106, s. 2, *post*, to parties under a disability. The amount of the rent-charge is under s. 4 of that Act to be settled in manner directed by s. 9, *supra*. On a contract of sale for a yearly rent-charge, under which the undertakers have entered, the vendor has no lien for arrears of the rent-charge (*Earl of Jersey* v. *Briton Ferry Floating Dock Co.* (1869), L. R. 7 Eq. 409).

(*y*) *E.g.*, by a power of entry (*Forster* v. *Manchester and Milford Rail. Co.* (1880), 49 L. J. Ch. 454).

(*z*) The power given by this section is extended by 23 & 24 Vict. c. 106, s. 2, *post*, to persons under a disability. The holder of a rent-charge may be allowed leave to distrain, notwithstanding the appointment of a receiver (*Eyton* v. *Denbigh, Ruthin, and Corwen Rail. Co.* (1868), L. R. 6 Eq. 14, 488). The rent-charge is a first charge upon the land conveyed, but upon that land only (*Eyton* v. *Denbigh, Ruthin, and Corwen Rail. Co.* (1869), L. R. 7 Eq. 439).

(*a*) See *Hooper* v. *Bourne* (1877), 3 Q. B. D., at p. 272. And see also s. 175 of the P. H. A., 1875, *ante*, p. 410.

Municipal corporations not to sell without the approbation of the Treasury.

15. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Treasury, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Purchase of lands otherwise than by agreement.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows (*b*) :

* * * * *

Notice of intention to take lands.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take (*c*), they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims (*d*) made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works (*e*).

(*b*) Sections 16 and 17 relate to the subscription of capital before these clauses are put in force. They are not set out here, as they cannot apply to local authorities.

See the P. H. A., 1875, s. 176, *ante*, p. 415, as to the conditions upon which these clauses can be put into force.

(*c*) As to the meaning of these words, see *Spencer* v. *Metropolitan Board of Works* (1882), 22 Ch. D. 142. The corporation of a borough, being empowered by a local Act which incorporated this Act to erect and maintain in, on, over, or under any street in which their tramways were laid poles and posts for the purpose of working the tramways by mechanical power, were held not to have taken land within the meaning of this Act by erecting a post on it in the pavement forming part of a street, and that a preliminary notice to or consent by the owner of the soil in order to justify their action was not required (*Escott* v. *Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135).

(*d*) W. was the lessor, and S. was the lessee of premises the frontage of which was compulsorily acquired by a tramway company under statutory powers. W. had claimed a certain sum as the present value of the frontage deferred until the expiration of the lease, and had accepted an offer by the company of a smaller sum "for the purchase of the interest claimed by you." S. on assigning the lessee's interest in the frontage covenanted with the company to pay the whole rent reserved by his lease. On an originating summons, W. asked to be declared entitled to require the company to procure from S. at their own expense a covenant by S. with W. to pay the whole rent reserved without deduction for severance. It was held that as W. had not put forward his claim on the ground that he would be deprived of any portion of the rent, there was no contract between W. and the company for the covenant asked for (*In re Way and London United Tramways Co., Ltd.* (1908), 125 L. T. Jo. 594).

(*e*) If notice to treat is served before applying to Parliament for power to take land, and the Act gives power to take more land than that described in the notice, such additional land may be taken, though it was not included in the notice (*In re Corporation of Huddersfield and Jacomb* (1875), L. R. 10 Ch. 92). After notice to treat an owner cannot deal with his property so as to cast any additional expense on the undertakers (*In re Marylebone Improvement Act* (1871), L. R. 12 Eq. 389; *Metropolitan Rail. Co.* v. *Woodhouse* (1864), 34 L. J. Ch. 297; 12 L. T. (N.S.) 113); nor can he deal with other property not included in the notice to treat, but injuriously affected by the proposed works, so as to give persons bonâ fide acquiring an interest in such property a right to compensation for injurious affection (*Mercer* v. *Liverpool, St. Helens, and South Lancashire Rail. Co.*, [1904] A. C. 461; 68 J. P. 533). But he may transfer his interest *in toto* (*Sewell* v. *Harrow and Uxbridge Rail. Co.* (1904), 19 T. L. R. 130; settled on appeal, 20 T. L. R. 21; see also *Zick* v. *London United Tramways, Ltd.*, [1908] 2 K. B. 126; 72 J. P. 257). The mere fact that the promoters have already taken possession of the property does not preclude them from their statutory right to give notice to treat (*Cooke* v. *London C. C.*, [1911] 1 Ch. 604;

19. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands. Service of notices on owners and occupiers of lands.

20. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands. Service of notice on a corporation aggregate.

21. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation (*g*). If parties fail to treat or in case of dispute, question to be settled as after mentioned.

75 J. P. 309). For a case where a builder after notice to treat suspended operations, having obtained an extension of time under his agreement, see *Birmingham and District Land Co.* v. *L. & N. W. Rail. Co.* (1889), 40 Ch. D. 268. Where notice to treat is given in respect of part only of the land comprised in a building agreement, the building agreement may be still binding in respect of the land not included (*Re Furness and Willesden U. D. C.* (1906), 70 J. P. 25; 22 T. L. R. 52). As to what expenditure by an owner can be recovered as thrown away, and therefore damage by reason of the execution of the works, see *Re Streatham and General Estates Co.* (1886), 4 T. L. R. 766. Notice to treat operates to release the landowner from any restrictive covenants that he may be under in respect of the land comprised in it (*Bailey* v. *De Crespigny* (1869), L. R. 4 Q. B. 180). The remedy of the covenantee is, under s. 68, for compensation from the undertakers, and not for an injunction or damages (*Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437; 60 J. P. 182; *Long Eaton Recreation Grounds Co.* v. *Midland Rail. Co.*, [1902] 2 K. B. 574; 67 J. P. 1). But a lessor may recover substantial damages for breach of covenant to repair committed after notice to treat and before assignment to the promoters (*Mills* v. *East London Union* (1873), L. R. 8 C. P. 79). Notice to treat does not make the landowner's claim for compensation an attachable debt before the compensation has been assessed (*Richardson* v. *Elmit* (1877), 2 C. P. D. 9). Where notice to treat is properly withdrawn, a second notice can be given provided the time limited under s. 123, *post*, p. 1361, has not expired (*Ashton Vale Iron Co.* v. *Bristol Corporation*, [1901] 1 Ch. 591). Persons known to be equitable mortgagees having a lien over the lands proposed to be taken, ought to be served with notice to treat as being "parties interested" (*Martin* v. *L. C. & D. Rail. Co.* (1866), L. R. 1 Ch. 501).

Where a proposed road is mentioned in the particulars scheduled to a notice to treat as one of the boundaries of the land to be purchased, the same must be regarded as descriptive only, and not as passing any right to have the road constructed, or any right over land adjacent to the land to be purchased (*In re London School Board and Foster* (1898), 87 L. T. (N.S.) 700).

As to what is a sufficient notice to treat, see *Shepherd* v. *Norwich Corporation* (1885), 30 Ch. D. 553. The notice to treat must be for the whole estate or interest of the parties interested in the lands (*In re Chilworth Gunpowder Co. and Manchester Ship Canal Co.* (1891), 8 T. L. R. 79).

For a general form of notice to treat, see Encyclopædia of Forms and Precedents, Vol. VIII., p. 40.

(*g*) See ss. 25—57, *post*, pp. 1328—1337. As to the right of a person whose lands are taken in respect of a right of pre-emption over adjoining lands, see *Clout* v. *Metropolitan Rail. Co.* (1883), 48 L. T. (N.S.) 257.

Disputes as to compensation where the amount claimed does not exceed £50 to be settled by two justices.

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected (*h*) by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices (*i*).

Compensation exceeding £50 to be settled by arbitration or jury, at the option of the party claiming compensation.

23. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration (*k*), and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award (*l*), or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Method of proceeding for settling disputes as to compensation by justices.

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof (*m*).

Appointment of arbitrators when questions are to be determined by arbitration.

25. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled

(*h*) That is, if injuriously affected, whether taken or not (*R.* v. *St. Luke's* (*Chelsea*) *Vestry* (1872), L. R. 7 Q. B. 148).

(*i*) The summons to hear and determine the question of compensation may be issued more than six months after the service of the notice to treat (*R.* v. *Hannay* (1875), 44 L. J. M. C. 27; 31 L. T. 702. See also s. 24, *infra*, and note thereto).

(*k*) That is, by arbitration under this Act, not under the P. H. A., 1875. See *Ex parte Rayner* (1878), 3 Q. B. D. 466; 42 J. P. 807.

Form of notice for arbitration, Encyclopædia of Forms and Precedents, Vol. VIII., p. 48.

Service of a subsequent notice to treat in respect of a larger piece of land does not put an end to the arbitration agreed upon in respect of the compensation payable for the smaller (*Rebbeck* v. *Bournemouth Corporation*, Times, March 17th, 1902).

(*l*) The umpire has a period of three months from the time when the arbitration devolves upon him (*Skerratt* v. *North Staffordshire Rail. Co.* (1848), 17 L. J. Ch. 161; *In re Bradshaw* (1848), 12 Q. B. 562; *In re Pullen and the Mayor of Liverpool* (1882), 51 L. J. Q. B. 285; 46 J. P. 468). The parties may by consent extend the time. The court can also extend the time for making the award even after the expiration of the three months (*In re Dare Valley Rail. Co.* (1869), L. R. 4 Ch. 554; *Rhodes* v. *Airedale Drainage Commissioners* (1876), 1 C. P. D. 403; *Warburton* v. *Haslingden L. B.* (1879), 48 L. J. Q. B. 451; Arbitration Act, 1889, s. 9, *post*, p. 1845; *Knowles & Sons, Ltd.* v. *Bolton Corporation*, [1900] 2 Q. B. 253).

(*m*) A settlement by justices under this section of the compensation due to any person is not an order within 11 & 12 Vict. c. 43, s. 11, and need not be made within six months (*R.* v. *Edwards* (1884), 13 Q. B. D. 586; 59 J. P. 117, overruling *Re Edmundson* (1851), 17 Q. B. 67).

by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator (*n*), each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking (*o*) under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties (*p*), and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

26. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing (*q*) some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed ex parte; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Vacancy of arbitrator to be supplied.

27. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing (*r*) under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade, *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case* (*s*),

Board of Trade empowered to appoint an umpire on neglect of the arbitrators.

(*n*) Form of appointment of single arbitrator, Encyclopædia of Forms and Precedents, Vol. VIII., p. 49.

(*o*) Form of appointment of arbitrator by promoters, Encyclopædia of Forms and Precedents, Vol. VIII., p. 50; the like under protest, *ibid.*, p. 51. Form of notice by promoters and request to appoint, *ibid.*, p. 53.

(*p*) Form of appointment of arbitrator to act for both parties where one party has failed to appoint, Encyclopædia of Forms and Precedents, Vol. VIII., p. 52.

(*q*) Form of appointment of arbitrator in place of one who has died, Encyclopædia of Forms and Precedents, Vol. VIII., p. 53.

(*r*) Form of appointment of umpire, Encyclopædia of Forms and Precedents, Vol. VIII., p. 58.

(*s*) These words are repealed by 46 & 47 Vict. c. 15, *post*, p. 1763.

shall, on the application (*t*) of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of death of single arbitrator, the matter to begin *de novo.*

29. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act, the other to proceed *ex parte.*

30. If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed ex parte, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties (*u*).

If arbitrators fail to make their award within twenty-one days, or extended time, the matter to go to the umpire.

31. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid (*x*).

Power of arbitrators to call for books, etc.

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrator or umpire to make a declaration.

33. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice (*y*) make and subscribe the following declaration; that is to say,

"I A. B. do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [naming the special Act].

"A. B.

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor (*z*).

(*t*) Form of request to Board of Trade to appoint umpire, Encyclopædia of Forms and Precedents, Vol. VIII., p. 55.

(*u*) The appointment of an umpire is not a condition precedent to the *ex parte* proceedings (*Shepherd* v. *Norwich Corporation* (1885), 30 Ch. D. 553).

(*x*) Form of extension of time for award, Encyclopædia of Forms and Precedents, Vol. VIII., p. 51. The umpire's duty devolves upon him at the expiration of the time named, and the time within which he must make his award runs from that date, whether or not he has received notice of the failure of the arbitrators to make their award (*Skerratt* v. *North Staffordshire Rail. Co.*, *ante*, p. 1328). By consent the umpire may sit with the arbitrators and make his award within the time of the arbitrators for making their award. See form of consent, Encyclopædia of Forms and Precedents, Vol. VIII., p. 56.

(*y*) That is, *any* justice, not merely one having jurisdiction where the lands are situated (*Davies* v. *South Staffordshire Rail. Co.* (1852), 21 L. J. M. C. 52; 15 Jur. 1133).

(*z*) As to when a failure to make this declaration will be a ground for setting aside the award, see *Levick* v. *Epsom, etc. Rail. Co.* (1859), 1 L. T. (N.S.) 60, and *cf. Ludlow Corporation* v. *Prosser* (1906), 4 L. G. R. 940. As to the time within which the declaration may be made, see *In re Bradshaw's Arbitration* (1848), 12 Q. B. 562.

34. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (*a*). Costs of arbitration, how to be borne.

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose (*b*). Award to be delivered to the promoters of the undertaking.

36. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties (*c*). Submission may be made a rule of court.

(*a*) The section contemplates nothing more than an offer of money (*Fisher* v. *G. W. Rail. Co.*, [1911] 1 K. B. 551). The right to costs depends upon the section, and not upon the provisions of the P. H. A. (*Ex parte Rayner*, *ante*, p. 1328). The section, however, only applies to a competent arbitration under the Act, and if there is no jurisdiction to hold the arbitration the promoters can be under no liability for costs (*L. & N. W. Rail. Co.* v. *Walker*, [1903] A. C. 289). The section applies to an offer made generally under s. 38, notwithstanding notice by the claimant under s. 23 (*Lascelles* v. *Swansea School Board* (1899), 69 L. J. Q. B. 24; 63 J. P. 742). If an offer is made but refused, and afterwards during the arbitration withdrawn by consent, and the subsequent award is less than the offer, the promoters of the undertaking cannot claim the benefit of this section (*Foster* v. *Sheffield Corporation* (1895), 59 J. P. 404; 72 L. T. (N.S.) 549). But if the award is not in respect of the same subject-matter as the offer, the claimant is entitled to costs, although the award is less than the offer (*Miles* v. *G. W. Rail. Co.*, [1896] 2 Q. B. 432). Thus, where a claim was made against a railway company for compensation in respect of the diversion of a footpath and the company offered £50 in settlement of the claim upon the understanding that they would construct a new road it was held that the claimant was entitled to the costs of arbitration proceedings although he was awarded only £50 thereunder (*Fisher* v. *G. W. Rail. Co.*, *supra*). Where costs are awarded, the execution of a conveyance is not a condition precedent to the payment of such costs (*Capell* v. *G. W. Rail. Co.* (1883), 11 Q. B. D. 345). As to statement of a special case by the arbitrator, see 52 & 53 Vict. c. 49, s. 7, *post*, p. 1845. And as to costs, see s. 20 of that Act, and *In re Gonty and Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439. Costs not included in the award cannot be afterwards given by the arbitrator (*South Mimms R. D. C.* v. *Barnet U. D. C.* (1900), 82 L. T. (N.S.) 421).

As to the taxation of the costs, see 58 & 59 Vict. c. 11, *post*, p. 1901; *Re Cannings and Middlesex C. C.*, [1907] 1 K. B. 51; 71 J. P. 46, and the following note. The taxing master's certificate disallowing fees charged by the arbitrator and umpires is not evidence that such fees are unreasonable or extortionate, and it must be shown that they are so in order that any part may be recovered back after payment in order to take up the award (*Llandrindod Wells Water Co.* v. *Hawksley* (1904), 68 J. P. 242; 20 T. L. R. 241). The function of the taxing master is ministerial only, not judicial, and therefore his certificate cannot be quashed on *certiorari* (*R.* v. *Goff*, [1905] 2 I. R. 121).

(*b*) Form of award, Encyclopædia of Forms and Precedents, Vol. VIII., p. 57. The promoters of the undertaking, though they have joined in the arbitration under protest, are bound to take up the award, and may be compelled to do so by *mandamus* (*L. & N. W. Rail. Co.* v. *Walker*, [1900] A. C. 109; 64 J. P. 483). But it is a good return that the prosecutor is not entitled to any compensation at all by reason that the lands alleged to be injuriously affected have not been so affected (*R.* v. *Cambrian Rail. Co.* (1869), L. R. 4 Q. B. 320). And if a protest on the ground of want of jurisdiction is upheld the promoters will not be liable to costs (*L. & N. W. Rail. Co.* v. *Walker*, [1903] A. C. 289). On taking up the award and paying the amount fixed by the arbitrator for so doing, including a bill of costs of solicitors employed by the umpire to draw up the award, the promoters are entitled to an order for taxation of such bill under s. 38 of the Solicitors Act, 1843 (*Re Collyer, Bristow & Co.*, [1901] 2 K. B. 839). The order may be made in any division of the High Court (R. S. C., Order LXV., r. 26A). The process of enforcing the award remains under the Lands Clauses Consolidation Act, 1845, notwithstanding s. 13 (1) of the Light Railways Act, 1896 (*R.* v. *Barton and Immingham Light Rail. Co., Ex parte Simon*, [1912] 3 K. B. 72; 76 J. P. 344).

(*c*) This does not enable an award to be enforced by motion (*Newbold* v. *Metropolitan Rail. Co.* (1863), 14 C. B. (N.S.) 405; *Re Walker and Beckenham L. B.* (1884), 48 J. P. 264;

Award not void through error in form.

37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form (*d*).

Promoters of the undertaking to give notice before summoning a jury.

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works (*e*).

Warrant for summoning jury to be addressed to the sheriff; or in certain cases to coroner, or to ex-sheriff or ex-coroner.

39. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose (*f*), and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested (*g*) in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate; and if all the coroners of such county be so interested such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Provisions applicable to sheriff to apply to coroner, or other person acting in place of sheriff.

40. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable

50 L. T. (N.S.) 287). An award may be enforced under s. 12 of the Arbitration Act, 1889, *post*, p. 1846, or by action. A claim for compensation under s. 68 is capable of assignment, and the assignee may bring an action in his own name to enforce the award (*Dawson* v. *G. N. Rail. Co.*, [1905] 1 K. B. 260; 69 J. P. 29). The period within which an action may be brought to enforce the award is six years from the date of the award (*Turner* v. *Midland Rail. Co.*, [1911] 1 K. B. 832; 75 J. P. 283).

(*d*) But it may be set aside if it include compensation in respect of a claim not legally enforceable (*Beckett* v. *Midland Rail. Co.* (1865), L. R. 1 C. P. 241). This case was considered in *Campbell* v. *Paddington Corporation*, [1911] 1 K. B. 869; 75 J. P. 277, when it was decided that where a nuisance is created by the erection of an unauthorised structure in a highway and special damage is thereby caused to a person by reason of the view from his house being obstructed, he is entitled to recover damages from the persons creating the nuisance. See also *Duke of Buccleuch* v. *Metropolitan Board of Works* (1867), L. R. 3 Ex. 320; *Re Hurley and Queenstown U. D. C.* (1913), 47 Ir. L. T. 117. By proceeding to arbitration the undertakers waive any misdescription of the claimant's interest (*Lovering* v. *City of London, etc. Subway Co.* (1890), 7 T. L. R. 600).

(*e*) This section does not apply where the promoters have already taken or injuriously affected land in respect of which no compensation has been made, and the section is not incorporated with s. 68, which is applicable to such cases (*Hayward* v. *Metropolitan Rail. Co.* (1863), 4 B. & S. 787; 33 L. J. Q. B. 73). An irregularity in complying with this section may be waived. See *Emmanuel Hospital* v. *Metropolitan District Rail. Co.* (1869), 19 L. T. 692. See also *R.* v. *Manley Smith* (1890), 56 J. P. 729; 67 L. T. (N.S.) 197. The offer may be accepted at any time before verdict, and in such case the jury should be directed to return a verdict for the amount of the offer (*R.* v. *High Bailiff of Westminster*, [1903] 2 K. B. 189; 67 J. P. 302). And further, as to this offer, see the note to s. 51, *post*, p. 1335.

Form of notice by promoters of intention to summon jury, Encyclopædia of Forms and Precedents, Vol. VIII., p. 59.

(*f*) Separate juries cannot be summoned in respect of each different property of the same owner included in the notice to treat (*Ecclesiastical Commissioners* v. *Commissioners of Sewers* (1872), 14 Ch. D. 305). A special jury can be had on proper notice under s. 54, *post*, p. 1336.

(*g*) As to the interest of the sheriff, see *R.* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1867), L. R. 2 Q. B. 336; 31 J. P. 453.

thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

41. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him (*h*). Jury to be summoned.

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn (*i*); and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array. Jury to be impannelled.

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law (*k*); and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question; and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts. Sheriff to preside. Witnesses to be summoned. View by jury.

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and in addition to the penalty hereby imposed every such juryman shall be subject to the same regulations, pains, and Penalty on sheriff and jurors for default.

(*h*) The sheriff must summon a fresh jury if the first inquisition has been quashed (*Horrocks* v. *Metropolitan Rail. Co.* (1865), 19 C. B. (N.S.) 139). A verdict will not be set aside on the ground that some of the jurymen were not qualified, the remedy in such case being by challenge (*In re Chelsea Waterworks Co.* (1854), 10 Exch. 731).

(*i*) See County Juries Act, 1825, s. 26.

(*k*) "These words were clearly intended to regulate the general course of the proceedings, to remove doubts concerning the right to begin, and to show in other respects how the inquisition should be conducted": *per* Lord DENMAN, C.J., in *R.* v. *Gardner* (1837), 6 A. & E., at p. 117. See also *R.* v. *Sheriff of Warwickshire* (1837), 2 Rail. Cas. 661.

penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Penalty on witnesses making default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of inquiry.

46. Not less than ten days notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party (*l*).

If claimant makes default, compensation to be determined by surveyor.

47. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

Jury to be sworn.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage; and the sheriff shall administer such oaths as well as the oaths of all persons called upon to give evidence.

Sums to be paid for purchase of lands, and for damage, to be assessed separately.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith (*m*).

Verdict and judgment to be recorded.

50. The sheriff before whom such inquiry shall be held shall give judgment for the purchase-money or compensation assessed by such jury (*n*); and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate

(*l*) Form of notice, Encyclopædia of Forms and Precedents, Vol. VIII., p. 63.

(*m*) These provisions are directory only (*Re Bradshaw's Arbitration* (1848), 12 Q. B. 562). As to the power of the court to quash a verdict for misdirection or improper rejection of evidence, see *Streatham and General Estates Co.* v. *Commissioners of Public Works* (1888), 52 J. P. 615.

Lands may be held with lands taken within the meaning of this section though not actually adjoining (*Cowper Essex* v. *Acton L. B.* (1889), 14 App. Cas. 153; 53 J. P. 756).

(*n*) Where a claimant has given particulars of his claim with items, he is not bound by such particulars, and the jury may award him more in respect of any particular item than the sum actually claimed in respect of it. It is doubtful, however, whether the verdict may be for a greater total sum than the total amount claimed (*Robertson* v. *City and South London Rail. Co.* (1904), 68 J. P. 280). Interest is payable not from date of verdict, but from the time when the promoters might prudently have taken possession, *i.e.*, in a case where the title has not been accepted before verdict, when a good title is shown (*In re Pigott and G. W. Rail. Co.* (1881), 18 Ch. D. 146, disapproving *Re Eccleshill L. B.* (1879), 13 Ch. D. 365).

in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies (*o*).

51. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered (*p*) by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry (*q*). Costs of the inquiry, how to be borne.

52. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry (*r*). Particulars of the costs.

53. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on Payment of costs.

(*o*) Form of verdict, Encyclopædia of Forms and Precedents, Vol. VIII., p. 64. The recording of the verdict and judgment is not a condition precedent to their validity (*Chabot* v. *Lord Morpeth* (1851), 15 Q. B. 446). And if not recorded, parol evidence may be given of the finding, and of the grounds on which it proceeded (*Manning* v. *Eastern Counties Rail. Co.* (1844), 12 M. & W. 237; 13 L. J. Ex. 265). The record is available as a title, no conveyance being necessary on possession being taken by the promoters after payment of the sum assessed (*Bruce* v. *Willes* (1840), 11 A. & E. 463; 9 L. J. M. C. 43). And the verdict and judgment may be enforced by *mandamus*, although the record is a record of quarter sessions (*R.* v. *Nottingham Old Waterworks Co.* (1837), 6 A. & E. 355; 6 L. J. K. B. 89).

(*p*) This applies only to an offer made under s. 38 (*R.* v. *Manley Smith* (1884), 12 Q. B. D. 481).

(*q*) The claimant is not entitled to any costs if an award is made in his favour in respect of a claim for which he has no right to compensation (*Todd* v. *Metropolitan District Rail. Co.* (1871), 24 L. T. (N.S.) 435; 19 W. R. 720). As to the offer of compensation, see s. 38, *ante*, p. 1332. As to costs of an abortive inquiry, see *R.* v. *North London Rail. Co.* (1882), 51 L. J. Q. B. 241; 30 W. R. 272. The conveyance by the owner is not a condition precedent to the payment of costs due to him (*Capell* v. *G. W. Rail. Co.* (1883), 11 Q. B. D. 345; 47 J. P. 246). Where the sum awarded was paid into court and the taxed costs paid to the claimant who afterwards was found to have no title, it was held that the costs so paid could not be recovered back (*London C. C.* v. *Campbell* (1888), 6 T. L. R. 420).

(*r*) The Chancery taxing masters whose office is amalgamated with and who are themselves transferred to the Central Office by general rules pursuant to the Supreme Court of Judicature (Officers) Act, 1879, which came into operation on January 11th, 1902, now have jurisdiction to tax these costs (*Covington* v. *Metropolitan District Rail. Co.*, [1903] 1 K. B. 231). The decision of the master cannot be reviewed (*Sandbach Charity* v. *North Staffordshire Rail. Co.* (1878), 3 Q. B. D. 1).

See also as to the taxation of the costs, 58 & 59 Vict. c. 11, *post*, p. 1901.

application to any justice he shall issue his warrant accordingly (*s*); and if any such costs shall be payable by the owner of the lands, or of any interest therein the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty in the manner used and accustomed by the proper officers of the superior courts (*t*).

Deficiency of special jurymen.

55. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury; and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Other inquiries before same special jury by consent.

56. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

(*s*) On proof of the allocatur, of the demand for payment, and non-compliance within seven days, the justice is bound to issue his warrant (*Metropolitan Rail. Co.* v. *Turnham* (1863), 14 C. B. (N.S.) 212). As regards the warrant and its execution the S. J. Acts will apply. See, particularly, the S. J. A., 1879, ss. 39 (4) and 43 (1), (8).

(*t*) Form of warrant for special jury, Encyclopædia of Forms and Precedents, Vol. VIII., p. 60; Form of notice of time and place for nomination, *ibid.*, p. 62. The special jury must be summoned if notice is given within twenty-one days limited by s. 68 without any further extension of time (*Glyn* v. *Aberdare Rail. Co.* (1859), 6 C. B. (N.S.) 359).

57. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year. Jurymen not to attend more than once a year.

58. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practicable surveyor as two justices shall nominate for that purpose as hereinafter mentioned. Compensation to absent parties to be determined by a surveyor appointed by two justices.

59. Upon application (*u*) by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party fail to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands (*x*), nominate an able practicable surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him, of the correctness thereof. Two justices to nominate a surveyor.

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,) Declaration to be made by the surveyor.

"I A. B. do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

"A. B.

"Made and subscribed in the presence of ."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein. Valuation, etc. to be produced to the owner of the lands on demand.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking. Expenses to be borne by promoters.

63. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith (*y*). Purchase money and compensation, how to be estimated.

(*u*) Form of application, Encyclopædia of Forms and Precedents, Vol. VIII., p. 65.

(*x*) Form of nomination, Encyclopædia of Forms and Precedents, Vol. VIII., p. 66. This need not specify the lands to be valued (*Poynder* v. *G. N. Rail. Co.* (1848), 16 L. J. Ch. 444; 16 Sim. 3).

(*y*) Compensation under this section may be awarded in one sum (*In re Bradshaw's Arbitration* (1848), 12 Q. B. 562). It must always be assessed on the basis of the value

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the Bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained, by notice in writing (*z*) to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Question to be submitted to the arbitrators.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay or deposit same within fourteen days.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered, with costs, by action or suit in any of the superior courts.

Costs of the arbitration.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

to the particular claimant of the lands taken or injuriously affected (*Bailey* v. *Isle of Thanet Light Rail. Co.*, [1900] 1 Q. B. 723), and not with reference to the value to the persons taking them, see *Stebbing* v. *Metropolitan Board of Works* (1871), L. R. 6 Q. B. 37 (churchyard). The latter case was cited as an authority to show that when a public body compelled a man to part with his property for public purposes, they ought to pay him what the property was worth to him because he was not a willing seller, and KEKEWICH, J., upheld this contention (*In re Smart and Stepney Borough Council* (1903), 25 M. C. C. 56). See also *Re Morgan and L. & N. W. Rail. Co.*, [1896] 2 Q. B. 469 (public park); *Trent Stoughton* v. *Barbados Water Supply Co.*, [1893] A. C. 502 (streams of water); *Re Gough and Aspatria, Silloth and District Joint Water Board*, [1904] 1 K. B. 417; 67 J. P. 137; *Re Tynemouth Corporation and Duke of Northumberland* (1903), 67 J. P. 425; 80 L. T. (N.S.) 557; *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; 72 J. P. 437 (land for reservoir); *City and South London Rail. Co.* v. *United Parishes of St. Mary Woolnoth and St. Mary Woolchurch Haw*, [1905] A. C. 1; 69 J. P. 101 (site of church). See also as to "special adaptability," *Cedars Rapids, etc. Co.* v. *La Coste* (1914), 30 T. L. R. 293.

Compensation is payable under this section in respect of land not taken which is the property of a person some of whose other land is taken, but which is separated from the land taken by intervening land belonging to other owners, *e.g.*, a line of railway (*R.* v. *Essex* (1888), 14 App. Cas. 153; 53 J. P. 756). So where windows were obstructed, some of which were ancient lights and some not, it was held that compensation must be paid in respect of the whole (*L. T. & S. Rail. Co.* v. *Gower's Walk Schools (Trustees)* (1890), 24 Q. B. D. 326). But no compensation is payable in respect of land not taken where no other land belonging to the claimant is taken or used for the purposes of the undertaking (*Horton* v. *Colwyn Bay and Colwyn U. D. C.*, [1907] 1 K. B. 327; 72 J. P. 57; *R.* v. *Mountford*, [1906] 2 K. B. 814; 70 J. P. 511), unless there is a special agreement to that effect (*L. & N. W. Rail. Co.* v. *Reddaway* (1907), 23 T. L. R. 279).

See also as to damage by severance, *R.* v. *Brown* (1867), L. R. 2 Q. B. 630; *Re Gonty and Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; *Ripley* v. *G. N. Rail. Co.* (1875), L. R. 10 Ch. 435.

(*z*) Form of notice, Encyclopædia of Forms and Precedents, Vol. VIII., p. 67.

68. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected (*a*) by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing (*b*) to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the under-

Compensation to be settled by arbitration or jury, at the option of the party claiming compensation.

(*a*) The damage awarded under this section must be damage in respect of which an action would have lain but for the statutory powers justifying it, and must arise from the execution of the works, not from the use of them when executed (*Ricket* v. *Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 31 J. P. 484; *Hammersmith Rail. Co.* v. *Brand* (1869), L. R. 4 H. L. 171; *R.* v. *Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358; *Metropolitan Board of Works* v. *M'Carthy* (1874), L. R. 7 H. L. 243; 38 J. P. 820; *Buccleuch (Duke)* v. *Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; 36 J. P. 724; *Caledonian Rail. Co.* v. *Walker's Trustees* (1881), 7 App. Cas. 259; 46 J. P. 676; *Canadian Pacific Rail. Co.* v. *Roy*, [1902] A. C. 220). For the numerous cases decided upon this section reference should be made to Lloyd on Compensation, Jepson's Lands Clauses Acts, and Browne and Allan on Compensation.

A county council, in the exercise of statutory powers, compulsorily acquired from a freeholder one-third of his land upon which two cottages were standing. This part of the premises constituted a strip thereof fronting a public road. The freeholder elected to retain the remaining two-thirds of his property. The council also acquired the leasehold interest in the whole of the property and pulled down all the cottages and not merely the two which stood on the strip. Upon action by the freeholder to enforce his right of re-entry and for damages for breach of covenants, it was held that the remedy by compensation under this section was not applicable as the damage was not the result of the proper exercise of statutory powers (*Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134; 72 J. P. 461).

Compensation can only be awarded in respect of an interest in lands, therefore a contract merely giving exclusive personal rights cannot be the basis of a claim for compensation (*Warr & Co., Ltd.* v. *L. C. C.*, [1904] 1 K. B. 713; 68 J. P. 335).

A house may have a special value, as, for example, a hotel or publichouse, and if so, the owner is entitled to be compensated for the depreciation in value of the house as having that special value (*Wadham* v. *N. E. Rail. Co.* (1886), 16 Q. B. D. 227; 49 J. P. 599).

As to compensation for the right of a local authority to access to a sewer, see *Birkenhead Corporation* v. *L. & N. W. Rail. Co.* (1885), 15 Q. B. D. 572; 50 J. P. 84.

Compensation is payable for injuriously affecting land during the execution of the works if the injury is sufficient to lessen the value of the property (*Ford* v. *Metropolitan Rail. Co.* (1886), 17 Q. B. D. 12; 50 J. P. 661).

As to compensation for a subsequent alteration in the construction of the works, see *Att.-Gen.* v. *Metropolitan Rail. Co.*, [1894] 1 Q. B. 384; 58 J. P. 348.

As to compensation for cutting off access to houses, see *Furness Rail. Co.* v. *Cumberland Co-operative Society* (1885), 49 J. P. 292, and *cf. Re G. E. Rail. Co. and London C. C.* (1907), 72 J. P. 1; 98 L. T. 116.

As to compensation for injuriously affecting ancient lights, when the Act authorised the purchase of easements, see *Wigram* v. *Fryer* (1887), 36 Ch. D. 87.

Where a lessee, pursuant to a power in his lease, determined his lease before injury had actually been done to him, it was held that he could not recover compensation by reason of his having had to remove to other premises (*R.* v. *Poulter* (1888), 20 Q. B. D. 132; 52 J. P. 244). If the reversion expectant on the determination of a lease is acquired by arrangement, but the lessee's interest is not acquired, and he is afterwards injuriously affected by the works, his remedy for breach of the covenant for quiet enjoyment is by compensation, not by action (*Manchester, Sheffield, and Lincolnshire Rail. Co.* v. *Anderson*, [1898] 2 Ch. 394). The mere probability of the continuance of a tenancy without disturbance is not ground for compensation (*Lynch* v. *Glasgow Corporation* (1903), 5 F. 1154).

For a case of "injuriously affecting," by reason of dealing with a highway, so as to divert the traffic, see *Metropolitan Board of Works* v. *Howard* (1887), 5 T. L. R. 732; and as to interfering with a private occupation road, see *Barnard* v. *G. W. Rail. Co.* (1902), 66 J. P. 568; 86 L. T. (N.S.) 798.

As to injuriously affecting mills by taking water, see *Page* v. *Kettering Waterworks Co.* (1891), 8 T. L. R. 228.

(*b*) Form of notice, Encyclopædia of Forms and Precedents, Vol. VIII., p. 68.

taking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts (*c*).

Application of compensation.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Purchase money or compensation payable to parties under disability, amounting to £200 to be deposited in the Bank.

69. If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery (*d*) to be placed to the account there of such Accountant-General, ex parte the promoters of the undertaking, (describing them by their proper name,) in the matter of the special Act, (citing it,) pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Application of moneys deposited.

In the purchase or redemption of the land tax (*e*), or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes (*f*); or

(*c*) A claim for compensation under this section is capable of assignment (*Dawson* v. *G. N. Rail. Co.*, [1905] 1 K. B. 260; 69 J. P. 29). The period within which an action may be brought is six years from the date of the award (*Turner* v. *Midland Rail. Co.*, [1911] 1 K. B. 832; 75 J. P. 283).

(*d*) Now the Paymaster-General. Some words are here repealed by the S. L. R. A., 1892.

(*e*) A tenant for life having redeemed before the passing of the special Act may be reimbursed (*Ex parte Northwick* (1842), 1 You. & Coll. 166). Costs of the purchase or redemption are chargeable on the promoters under s. 80, *post*, p. 1345 (*Re L. B. & S. C. Rail. Co.* (1854), 18 Beav. 608).

(*f*) As to what constitute incumbrances, see *Ex parte Lockwood* (1851), 14 Beav. 158 (inclosures expenses); *Ex parte Sheffield Corporation* (1856), 25 L. J. Ch. 587; 4 W. R. 70 (existing lease); *Re Brasher's Trust* (1856), 6 W. R. 406; *Ex parte London Corporation* (1868), L. R. 5 Eq. 418 (existing leases); *Ex parte Kirksmeaton* (1882), 20 Ch. D. 203; *Re Brewer* (1875), 1 Ch. D. 409 (rent-charges); *Re Derby Municipal Estates* (1877), 3 Ch. D. 289 (securities for loans by corporation); *Re Davies' Estate* (1858), 27 L. J. Ch. 712; 6 W. R. 844 (statutory charge); *Re London Street, Greenwich* (1888), 57 L. T. (N.S.) 673 (right of re-entry); *Ex parte Tottenham* (1884), 13 L. R. Ir. 479 (tithe rent-charge); *Ex parte Ballinrobe and Claremorris Light Rail. Co. and Kenny*, [1913] 1 I. R. 519 (mortgages).

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled (*g*); or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct (*h*); or

In payment to any party becoming absolutely entitled to such money (*i*).

70. Such money may be so applied as aforesaid upon an order of the Court of Chancery made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three Per Centum Consolidated or Three Per Centum Reduced Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands (*k*).

Order for application, and investment meanwhile.

71. If such purchase money or compensation shall not amount to the

Sums from £20 to £200 to be deposited, or paid to trustees.

As to other lands, see *Ex parte Lockwood; Ex parte London Corporation, supra; Ex parte Cambridge Corporation* (1848), 6 Hare, 30; 5 Rail. Cas. 204. As to costs when purchase-money is sought to be applied in paying off incumbrances, see *In re Dublin, Wicklow, and Wexford Rail. Co.* (1890), 25 L. R. Ir. 175.

(*g*) As to commonable land, see *Nash* v. *Coombs* (1868), L. R. 6 Eq. 51. Enfranchisement of copyholds is equivalent to purchase of other lands (*Re Ground's Estate* (1852), 1 W. R. 32; *Dixon* v. *Jackson* (1855), 25 L. J. Ch. 588; 4 W. R. 450; *Re Cheshunt College* (1854), 3 W. R. 638; 1 Jur. (N. S.) 995). As to purchase of leaseholds instead of freeholds, see *Re Rehoboth Chapel* (1875), L. R. 19 Eq. 180. An equity of redemption cannot be purchased (*Ex parte Macaulay* (1854), 23 L. J. Ch. 815; *Re Portadown, Dungannon, and Omagh Junction Rail. Co.* (1876), Ir. R. 10 Eq. 368). As to effect of the Settled Land Act, 1882, see *Re Byron's Charity* (1883), 23 Ch. D. 171; *Ex parte Corporation of the City of London* (1901), 45 Sol. J. 259.

(*h*) See *Re Ward's Estates* (1885), 28 Ch. D. 100; *Ex parte Commissioners of Sewers and Vicar of St. Botolph's, Aldgate*, [1894] 3 Ch. 544; *Re London C. C., Ex parte Pennington* (1901), 65 J. P. 536; 84 L. T. (N.S.) 808.

(*i*) See *In re the Parson, etc. of St. Alban's* (1886), 55 L. T. (N.S.) 314. The purchase-money for land belonging to a waterworks company, forming part of their pipe track, was held rightly paid into court under this section, and was ordered to be paid out to the company (*Re Chelsea Waterworks Co.* (1887), 56 L. J. Ch. 640; 56 L. T. (N.S.) 421). See further as to persons absolutely entitled, as corporate trustees of charity property, *Re Spurstowe's Charity* (1874), L. R. 18 Eq. 279; *Re Haberdashers' Co.* (1886), 55 L. T. (N.S.) 758; *Ex parte Bowman*, W. N. (1881), 179; *Re Leeds Grammar School*, [1901] 1 Ch. 228; 65 J. P. 88; *Re Sheffield Corporation and Trustees of St. William's Roman Catholic Chapel and Schools*, [1903] 1 Ch. 208; as dowress, *Re Hall's Estate* (1870), L. R. 9 Eq. 179; as lord of the manor, *Att.-Gen.* v. *Meyrick*, [1893] A. C. 1; 57 J. P. 212. It is in the discretion of the court whether money will be ordered to be paid out to trustees of settled lands (*In re Smith* (1889), 40 Ch. D. 386). The purchase-money of lands allotted by an inclosure award to the surveyor of highways for road materials was, subject to the consent of the L. G. B., ordered to be paid out to an urban district council as being the surveyor of highways and absolutely entitled under the Sale of Exhausted Parish Lands Act, 1876 (*Ex parte Brumby and Frodingham U. D. C.* (1905), 69 J. P. 96; 3 L. G. R. 258). A metropolitan borough council who have not obtained the consent of the L. G. B. to the sale of land as required by s. 6 (5) of the London Government Act, 1889, are not persons "absolutely entitled" (*Ex parte G. W. Rail. Co.*, [1909] W. N. 202; 74 J. P. 21, overruling *Ex parte Woolwich Corporation*, [1908] W. N. 56). For a case of apportionment of the costs of re-investment where the petition related to two funds in court, see *Ex parte Perpetual Curate of Bilston* (1887), 37 W. R. 460. But see *Ex parte Watford U.D.C.* (1914), 78 J. P. N. 160. An apportionment cannot be made under this section between a tenant for life and remainderman (*Re Robinson's Settlement Trusts*, [1891] 3 Ch. 129).

(*k*) It may also be invested in any securities in which cash under the control of the court may be invested (*Ex parte St. John Baptist College, Oxford* (1883), 22 Ch. D. 93. See R. S. C., Order XXVI., r. 17. As to the costs of investment, see s. 80, *post*, p. 1345, and note thereto.

sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose; and the moneys so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the Court for that purpose (*l*).

Sums not exceeding £20 to be paid to parties.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit; or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled, to be paid into Bank, or to trustees.

73. All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels or other accommodation works, or for assenting to or not opposing the passing of the Bill authorising the taking of such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided (*m*) always, that it shall be in the discretion of the Court of Chancery, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

74. Where any purchase money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court

(*l*) Under this section, where a sum of £34 had been paid into court, payment out was directed to be made to a tenant for life who undertook to spend it in permanent improvements (*Ex parte Smith, Re Kells' Union Guardians* (1889), 21 L. R. Ir. 346).

(*m*) For an instance of the application of this proviso, see *Re Saunderton Glebe Lands*, [1903] 1 Ch. 480.

may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be (*n*).

Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

75. Upon deposit in the Bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking; and as against such parties, and all parties on behalf of whom they are herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands (*o*).

Where parties refuse to convey or do not show title, or cannot be found, the purchase money to be deposited.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the Kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the

(*n*) See *Re Barrington, Gamlen* v. *Lyon* (1886), 33 Ch. D. 523. This case was discussed and distinguished in *Re Robinson's Settlement Trusts*, [1891] 3 Ch. 129. A lessor having a right of re-entry in respect of non-payment of rent was held to be a person interested in compensation to the lessee paid into court, such right being an incumbrance on the leasehold interest (*Re London Street, Greenwich* (1888), 57 L. T. (N.S.) 673).

(*o*) See note (*b*) to s. 176 of the P. H. A., 1875, *ante*, p. 418, as to the effect of this section where owners cannot give a good title. The promoters are bound both under the ordinary law of specific performance, and where the property is not vested in them by the special Act, also by s. 12 of the Finance Act, 1895, to take a conveyance which must be settled by the court if the parties differ (*Re Cary Elwes Contract*, [1906] 2 Ch. 143; 70 J. P. 345). In a case decided under Michael Angelo Taylor's Act, 1817, it was held that a vendor is entitled to have the dimensions of the property inserted in the conveyance (*Monighetti* v. *Wandsworth Borough Council* (1909), 73 J. P. 91).

name and with the privity of the Accountant-General of the Court of Chancery (*p*), to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands, (describing them, so far as the promoters of the undertaking can do,) subject to the control and disposition of the said court (*q*).

Upon deposit being made a receipt to be given, and the lands to vest in the promoters upon a deed poll being executed.

77. Upon any such deposit of money as last aforesaid being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of moneys so deposited.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit (*r*).

Party in possession to be deemed the owner.

79. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties

(*p*) Now the Paymaster-General.

(*q*) See as to this and the next section, *Wells* v. *Chelmsford L. B.* (1880), 15 Ch. D. 108; 45 J. P. 6.

(*r*) As to the procedure when the land is land in respect of which the purchase-money is claimed by the Crown or by other claimants, see *Ex parte Reeve, Re Manor of Lowestoft and G. E. Rail. Co.* (1883), 24 Ch. D. 253. For the purposes of the Housing of the Working Classes Acts, 1890–1909, this section is superseded by the Housing, Town Planning, etc., Act, 1909, s. 5 (1), *ante*, p. 871.

As to the rights of a tenant for life of settled land, see *Re Griffith's Will* (1883), 49 L. T. (N.S.) 161. As to mortgages, see *Ex parte Ballinrobe and Claremorris Light Rail. Co., Ltd. and Kenny* (1913), 47 Ir. L. T. 101.

Where £400 was awarded, of which £150 was for a leasehold interest which was mortgaged, and £250 for trade damages, etc., the court ordered the £250 to be paid out at once (*Cooper* v. *Metropolitan Board of Works* (1884), 25 Ch. D. 472).

As to the procedure on applications for payment of money out of court, see R. S. C., Order LV., r. 2; *Ex parte London Corporation* (1884), 25 Ch. D. 384; *Ex parte Maidstone and Ashford Rail. Co.* (1884), 25 Ch. D. 138; *Re Brandram* (1884), 25 Ch. D. 365; *Re Madgwick* (1884), 25 Ch. D. 371; *Re Callon's Will* (1884), 25 Ch. D. 240; *Ex parte Jesus College* (1884), 50 L. T. (N.S.) 583; *Re Bethlehem and Bridewell Hospitals* (1885), 30 Ch. D. 541; *Re Haworth*, W. N. (1885) 48.

As to costs, see *Re Fisher*, [1894] 1 Ch. 450; *Re Leeds Grammar School*, [1901] 1 Ch. 228; 65 J. P. 88; *Re Kearns, Ex parte Lurgan U. D. C.*, [1902] 1 I. R. 157; *Re Schmarr*, [1902] 1 Ch. 326.

An order was made for *interim* investment of a fund arising out of charity lands taken

respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly (*s*).

80. In all cases of moneys deposited in the Bank under the provisions of this or the special Act, or an Act incorporated therewith, except (*t*) where such moneys shall have been so deposited by reason of the wilful refusal (*tt*) of any party entitled thereto to receive the same (*u*), or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking (*u*) of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities (*x*), and of the re-investment thereof in the purchase of other lands (*y*), and also the costs of obtaining the proper orders (*z*) for any of the

Costs in cases of money deposited (*w*).

in *Re Stafford's Charity* (1887), 57 L. T. (N.S.) 846. On petition for payment out of moneys deposited for purchase of a leasehold interest, the court refused to make the order conditional on the lease being handed over (*Taylor* v. *Whittaker*, W. N. (1890) 9).

(*s*) See *Ex parte Chamberlain* (1880), 14 Ch. D. 323; which was followed in *Re Harris, Hansle* v. *Harris*, [1909] W. N. 181. In the latter case it was held that a person showing title by adverse possession for twelve years after the expiration of a long term of years to land taken under the Lands Clauses Act will, in the absence of any valid claim by the reversioner, be deemed to be the owner of the land and entitled to the payment out of the purchase-money. As to the right to the value of a reversion after the expiration of a term when the reversioner is unknown, see *Gedye* v. *Commissioners of Works*, [1891] 2 Ch. 630; *Re Harris's Estate, Ex parte London C. C.*, [1901] 1 Ch. 931.

(*t*) The court has now, by virtue of the Supreme Court of Judicature Act, 1890, s. 5, a discretionary power to order payment of costs in the excepted cases (*In re Schmarr*, [1902] 1 Ch. 326).

(*tt*) See *In re Jones and Cardiganshire C. C.* (1913), 57 Sol. Jo. 374.

(*u*) See *Re Leeds Grammar School*, [1901] 1 Ch. 228; 65 J. P. 88; *In re Dublin Corporation and Baker*, [1912] 1 I. R. 498.

(*w*) See note (*i*), *ante*, p. 1341, and note (*b*), *post*, p. 1347.

(*x*) See *Charlton* v. *Rolleston* (1885), 28 Ch. D. 137; and as to costs of brokerage, see *In re Gaselee and London C. C.*, [1901] 1 Ch. 923; *Re Magdalen College, Oxford*, [1901] 2 Ch. 786; 66 J. P. 23. Where a petition is presented for the payment out of court of two funds of unequal value representing the purchase-money of lands acquired by two railway companies respectively, the brokerage on selling the two funds must be borne by the two companies equally and ought not to be apportioned according to the relative amounts of the two funds (*Ex parte Emmanuel Hospital* (1908), 24 T. L. R. 261). A petition was presented to obtain payment out of a fund which represented moneys paid into court by a railway company under this section and asked further for the payment out of another fund representing proceeds of enfranchisement of copyholds, and that the costs of the petitioner and all other necessary parties might be taxed and paid by the railway company, except such amount of the costs as should be certified as arising from the inclusion in the petition of the fund representing the enfranchisement of the copyholds. It was held that there was no difference between the case and one of an application for re-investment in land, and that the order asked for as to costs was a proper one (*In re Lynn and Fakenham Railway Extension Act*, 1880, [1909] W. N. 24; 73 J. P. 163).

(*y*) See *Re Gedling Rectory* (1885), 53 L. T. (N.S.) 244; *Drake* v. *Greaves* (1886), 33 Ch. D. 609; *Att.-Gen.* v. *St. John's Hospital, Bath*, [1893] 3 Ch. 151; *Re the Bishopsgate Foundation*, [1894] 1 Ch. 185; *Re Arden* (1894), 70 L. T. (N.S.) 506; *Ex parte Lurgan U. D. C., Re Kearns*, [1902] 1 I. R. 157; *Ex parte Thavie Estate Trustees*, [1905] 1 Ch. 403; *Re Clark*, [1906] 1 Ch. 615; *Re Nepton's Charity* (1907), 22 T. L. R. 442.

(*z*) Where a summons is only partly successful the costs payable by the promoters

purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants (*a*): Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Conveyances.

And with respect to the conveyances of lands, be it enacted as follows:

Form of conveyances.

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Costs of conveyances.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interest therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all

must be confined to the costs of obtaining the particular order which is made (*In re Jacobs, Baldwin* v. *Pescott*, [1908] 2 Ch. 691). Where schools had been taken, the costs of settling a new scheme for applying the purchase-money in buying a new site and erecting fresh schools were held too remote to be recoverable under this provision (*Re St. Paul's Schools, Finsbury* (1883), 52 L. J. Ch. 454). But compare *Re Butchers' Co.* (1885), 53 L. T. (N.S.) 491. Where a local authority in pursuance of the compulsory powers conferred on them by the Act take land belonging to a charity, and as a direct result the trustees of the charity apply to the Charity Commissioners for a scheme for the regulation of the charity, the costs of the trustees so incurred are payable by the local authority (*In re Wood Green Gospel Hall Charity, Ex parte Middlesex C. C.*, [1909] 1 Ch. 263). The allowance of two fees for attendance before the Accountant-General, on an application under the Supreme Court Funds Rules, 1905, rr. 34, 35, for payment out of funds paid in under the Act, which originated when under the practice in Chancery under the old consolidated orders it was necessary for the solicitor to attend both before the Registrar and also before the Accountant-General, was held to be common form to-day and such fees were accordingly allowed (*In re Butler, Ex parte Metropolitan Board of Works*, [1912] W. N. 50; 106 L. T. 673). See also *In re Piggin, Ex parte Mansfield Rail. Co.*, [1913] 2 Ch. 326, as to the persons to be made parties to a petition.

(*a*) A local authority as promoters acquired some land for the purposes of their undertaking, and paid the purchase-money into court in consequence of the title to the land being in dispute. The dispute was subsequently settled without actual litigation. It was held that the costs of the negotiations for the settlement of the dispute as to the title were costs occasioned by adverse litigation within the meaning of the section (*In re Hood and In re West Ham Corporation Act*, 1902, [1910] W. N. 80; 74 J. P. 179).

other reasonable expenses incident to the investigation, deduction, and verification of such title (*b*).

Taxation of costs of conveyances.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation (*c*).

Entry on lands.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, etc.

84. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein

(*b*) Costs of proving their incumbrances were refused to mortgagees of reversionary interests in the funds in court, the mortgages being subsequent to the payment into court (*Re Gough's Trusts* (1883), 24 Ch. D. 569). But this decision was dissented from in *Re Olive's Estate* (1890), 44 Ch. D. 316. See, as to costs of adverse litigation, *Re Cutling's Estate*, W. N. (1890) 75; *Ex parte Cooper* (1864), 34 L. J. Ch. 373; 11 L. T. (N.S.) 661. See, as to the right to costs in the case of a lessor having a right of re-entry in respect of unpaid rent, *Re London Street, Greenwich* (1888), 57 L. T. (N.S.) 673; in the case of the trustee of a settlement relating to land taken, *Re English's Settlement* (1888), 39 Ch. D. 556. As to costs of a disentailing deed, see *Re Navan and Kingscourt Rail. Co. and Fingall*, [1906] 1 I. R. 557. As to the costs of successive orders for payment of dividends, see *In re Rider* (1888), 37 Ch. D. 595. As to costs for purpose of conveyance of copyholds under s. 95 after decease of vendor, see *Re Thames Tunnel (Rotherhithe and Ratcliff) Act*, 1900, [1908] 1 Ch. 493; 72 J. P. 153, overruling on this point *Re London United Tramways Act*, 1900, [1906] 1 Ch. 534; and of leaseholds in similar conditions, *In re Elementary Education Acts*, 1870 *and* 1873, *Ex parte Baxter*, [1909] 1 Ch. 55; 73 J. P. 22. As to procedure by petition or summons, see *Re Hargrave's Trust, Ex parte Bradford Corporation* (1888), 58 L. T. (N.S.) 367; *Re De Grey's Entailed Estate*, W. N. (1887) 241. The undertakers take the risk of having to pay the costs in cases where money in court is dealt with under powers contained in a settlement (*Re Brooshoft's Settlement* (1889), 42 Ch. D. 250). Undertakers were ordered to pay costs of re-investing consols in which purchase-money had been invested, on their being redeemed by Government (*Re Brown* (1890), 59 L. J. Ch. 530; 63 L. T. (N.S.) 131). As to the costs of payment out when there has been a refusal to show title, see *Re St. Luke's Vestry*, W. N. (1889) 102. As to interest on costs and the form of order, see *Re Bird's Estate*, W. N. (1889) 182.

The costs of conveyance include costs of taking out letters of administration necessary to make a legal title (*Ex parte Keatley* (1890), 25 L. R. Ir. 265; *Ex parte Kelly* (1893), 31 L. R. Ir. 137; *Ex parte Rorke*, [1894] 1 I. R. 146; *Re Lloyd and North London Rail. Co.*, [1896] 2 Ch. 397; *Re Liverpool Improvement Act* (1868), L. R. 5 Eq. 282). And see *Re Griggs, Ex parte London School Board*, [1914] W. N. 220.

Under s. 38 (3) of the Finance (1909–10) Act, 1910, the amount, if any, payable by the transferor as increment value duty shall not be treated as part of the costs or expenses of a conveyance of land and shall not be taken into account in assessing the compensation to be paid to the transferor.

(*c*) The promoters cannot tax these costs after payment (*Ex parte Somerville* (1883), 23 Ch. D. 167).

Rule 11 of Sched. I., Part 1, of the General Order under the Solicitors Remuneration Act, 1881, does not apply to vendor's costs under this section (*In re Stewart* (1889), 41 Ch. D. 494). And see *In re Burdekin & Co.*, [1895] 2 Ch. 136; *In re Middlesex Light Railways Order*, 1903, [1908] W. N. 167.

mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof (*d*).

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

85. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided (*e*) in the case of parties who cannot be found, be determined to be the value of such lands (*f*), or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties, to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act (*g*).

(*d*) It is to be observed that the promoters are empowered to enter upon the lands for the purpose of "probing or boring." They are not apparently enabled to sink and keep open for a time trial holes such as are required by the L. G. B. in cases of sewage disposal schemes. A local authority should endeavour in these cases to obtain the consent of the owners and to pay for any damage that may be done. In cases of compulsory purchase, this power of entry for examination of soil does not seem to arise until the Provisional Order under the P. H. A., 1875, s. 176, has been obtained.

(*e*) Section 59, *ante*, p. 1337.

(*f*) Including compensation for severance, etc. (*Field* v. *Carnarvon and Llanberis Rail. Co.* (1868), L. R. 5 Eq. 190).

(*g*) If no actual entry be made after deposit of security, then the lands cannot be considered to have been taken under this section (*R.* v. *Manley Smith* (1892), 56 J. P. 729; 67 L. T. (N.S.) 197). As to entry under this section when the time for the execution of the works was about to expire, see *Loosemore* v. *Tiverton, etc. Rail. Co.* (1884), 9 App. Cas. 480; 48 J. P. 372, which was explained and followed in *G. W. Rail. Co.* v. *Midland Rail. Co.*, [1909] A. C. 445. As to entry on land when the promoters were entitled to acquire only an easement of tunnelling, see *Hill* v. *Midland Rail. Co.* (1882), 21 Ch. D. 143.

86. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Accountant-General of the Court of Chancery (*h*), to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money specifying therein for what purpose and to whose credit the same shall have been paid in.

Upon deposit being made cashier to give receipt.

87. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in Bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be lawful for the said court to order the same to be applied, in such manner as it shall think fit, for the benefit of the parties for whose security the same shall so have been deposited (*i*).

Deposit to remain as a security, and to be applied under the direction of the court.

88. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery, to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise,) such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being addressed to the Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the

The company may pay the deposit-money into the Bank by way of security during the time that the office of the Accountant-General is closed.

Under the corresponding section of the Lands Clauses Consolidation (Scotland) Act, 1845, it was held that where the owner of lands entered upon under that section dispensed with the giving of a bond, he was nevertheless entitled to 5 per cent. interest upon the compensation from the date of the promoters entering upon his land till the compensation was paid; and was entitled to payment of such interest out of the sum deposited by the promoters (*West Highland Rail. Co.* v. *Place* (1894), 21 Ct. of Sess. Cas. (4th ser.) 576).

If lands are taken under this section for an unauthorised purpose the landowner can recover possession with damages for any injury done to the premises (*Batson* v. *London School Board* (1903), 67 J. P. 457; 20 T. L. R. 22).

Entry by mistake on lands not included in the notice to treat is a trespass, although notice to treat is subsequently given in respect of such lands (*Cardwell* v. *Midland Rail. Co.* (1904), 21 T. L. R. 22).

(*h*) Now the Paymaster-General.

(*i*) On proof that the condition of the bond has been fulfilled by payment to the party to whom it was given, and that it has been delivered up to the promoters, the promoters are entitled upon petition by themselves and the obligee of the bond, to have the deposit paid out to them without showing that payment of the purchase-money of the land has been made to the persons really entitled to it (*Ex parte Midland Rail. Co.*, [1904] 1 Ch. 61).

credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the Report Office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully (*k*) enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices (*l*) ; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts : Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall bonâ fide and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Decision of justices not conclusive as to the right of the promoters.

90. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

91. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly ; and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession ; and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress,

(*k*) This does not include an entry under a mistaken belief of right (*Steele* v. *Midland Rail. Co.* (1869), 21 L. T. (N.S.) 387). See also *Hutchinson* v. *Manchester, Bury, and Rossendale Rail. Co.* (1846), 15 M. & W. 314 ; 15 L. J. Ex. 293.

(*l*) See s. 136, *post*, p. 1366.

and upon application to any justice for that purpose he shall issue his warrant accordingly (*m*).

92. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof (*n*). Parties not to be required to sell part of a house, etc.

And with respect to small portions of intersected land, be it enacted as follows: *Intersected lands.*

93. If any lands, not being situate in a town (*o*) or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the Owners of intersected lands may insist on sale.

(*m*) The aid of the sheriff is not necessary unless the entry is actually resisted (*Loosemore* v. *Tiverton, etc. Rail. Co., ante*, p. 1348). See also *In re Way and London United Tramways, Ltd.* (1908), 125 L. T. Jo. 594, the facts of which are set out at p. 1326, *ante*; *Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134; 72 J. P. 461.

(*n*) House includes curtilage and garden (*Grosvenor* v. *Hampstead Junction Rail. Co.* (1857), 1 De G. & J. 446; 26 L. J. Ch. 731; *Governors of St. Thomas's Hospital* v. *Charing Cross Rail. Co.* (1860), 30 L. J. Ch. 395; 4 L. T. (N.S.) 13). In one case it was held that a paddock was part of a house within this section (*Barnes* v. *Southsea Rail. Co.* (1884), 27 Ch. D. 536). So, also, two houses which communicated internally, and were used as one (*Seigenberg* v. *Metropolitan District Rail. Co.* (1883), 49 L. T. (N.S.) 554; 32 W. R. 333). But not two houses at one of which a manufacture is carried on, and at the other of which, in another street, the goods are sold (*Benington* v. *Metropolitan Board of Works* (1886), 50 J. P. 740; 54 L. T. (N.S.) 837). See *Reddin* v. *Metropolitan Board of Works* (1862), 4 De G. F. & J. 532; 27 J. P. 4. The acceptance by a company's solicitor of a notice under this section to take property, which the company is not compellable to take, is not binding on the company (*Treadwell* v. *L. & S. W. Rail. Co.* (1885), 54 L. J. Ch. 565). As to what is a manufactory, see *Richards* v. *Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425; *Brook* v. *Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1894] 2 Ch. 571. The case of *Richards* v. *Swansea Improvement and Tramways Co., supra*, was considered in *Regent's Canal and Dock Co.* v. *London C. C.*, [1912] 1 Ch. 583; 76 J. P. 353, where it was held that the words "other building" mean other building in the nature of a house, although in ordinary language it would not be described as a house. They do not include the entire undertaking of a canal and dock company. The test whether the undertakers are compellable to take along with a garden, stables, etc., for which they have given notice to treat, a house enjoyed therewith but separated therefrom by a road, is whether the garden, stables, etc. would have passed by a conveyance of the house simply (*Kerford* v. *Seacombe Rail. Co.* (1888), 57 L. J. Ch. 270; 52 J. P. 487; *Allhusen* v. *Ealing and South Harrow Rail. Co.* (1897), 78 L. T. (N.S.) 396; 46 W. R. 483; *Low* v. *Staines Reservoir Joint Committee* (1902), 64 J. P. 212). A notice referring to one tenement and part of another tenement, but abandoned altogether when the owner demands that the whole of the other tenement shall be taken, cannot be treated as still existing in respect of the first-mentioned tenement (*Thompson* v. *Tottenham and Forest Gate Rail. Co.* (1893), 57 J. P. 181; 67 L. T. (N.S.) 116). On receipt of a counter-notice under this section, a notice to treat may be withdrawn, and thereupon the promoters of the undertaking will be put in the same position as if no notice to treat had ever been given by them. They may issue fresh notice to treat, and withdraw that also with the like result, as often as counter-notice is given (*Ashton Vale Iron Co.* v. *Bristol Corporation*, [1901] 1 Ch. 591). A notice under this section may be given even after notice of claim has been made in answer to the notice to treat, and after prolonged negotiations as to such claim (*Lavers* v. *London C. C.* (1905), 69 J. P. 362; 93 L. T. (N.S.) 233; *Pollard* v. *Middlesex C. C.* (1907), 71 J. P. 85). And a notice under this section may even be given after the surveyors on both sides have agreed on the compensation under the notice to treat (*Pollard* v. *Middlesex C. C.* (1907), 71 J. P. 85; 95 L. T. (N.S.) 870). When on the compulsory sale of part of a property the owner may require the promoters to purchase the whole and does so, this does not constitute a compulsory sale of the whole so as to entitle the owner to the extra allowance for compulsory sale (*Jervis* v. *Newcastle and Gateshead Water Co.* (1896), 13 T. L. R. 14).

In issuing Provisional Orders under s. 176 of the P. H. A., 1875, for the compulsory purchase of lands by local authorities, the L. G. B. invariably decline to insert any provision releasing the authority from their obligation to purchase whole properties if so required under this section.

(*o*) *Falkner* v. *Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458. See *L. & S. W. Rail. Co.* v. *Blackmore* (1869), L. R. 4 H. L. 610; *Carrington* v. *Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377.

owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Exception.

Promoters of the undertaking may insist on purchase where expense of bridges, etc. exceeds the value.

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands (*p*) have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land; and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Copyhold

And with respect to copyhold lands, be it enacted as follows:

Conveyances of copyhold lands to be enrolled.

95. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender (*q*) of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

(*p*) Whether situate in a town or elsewhere (*Eastern Counties Rail. Co.* v. *Marriage* (1861), 9 H. L. Cas. 32).

(*q*) Not also any fee on admittance (*Cooper* v. *Norfolk Rail. Co.* (1849), 3 Exch. 546). A lord of a manor, entitled by custom to fines on surrender and admittance, is not entitled to any fine on the execution of the conveyance, nor upon the enrolment, nor to any compensation for the loss (*Ecclesiastical Commissioners* v. *L. & S. W. Rail. Co.* (1854), 14 C. B. 743; 23 L. J. C. P. 177). But until enfranchisement he is entitled to the same fines as would have accrued payable but for the taking of the land (*Lord Leconfield* v. *L. & N. W. Rail. Co.*, [1907] 1 Ch. 38).

Where trustees of a will agreed to sell a strip of subsoil under three copyhold houses to the London County Council, who were by the contract to pay the vendor's costs of title and conveyance as allowed by the Lands Clauses Consolidation Act, 1845, and on investigating the title it appeared that there had been no surrender or admission since April, 1870, and the vendors, at the request of the council, obtained the admission of the customary co-heirs of the last-surviving tenant on the court roll who had been a former trustee, it was held that the steward's fees and costs of admittance must be borne by the council, but that the lord's fine was not payable by the council (*Re Thames Tunnel* (*Rotherhithe and Ratcliff*) *Act*, 1900, [1908] 1 Ch. 493; 72 J. P. 153, overruling *Re London United Tramways Act*, 1900, [1906] 1 Ch. 534).

96. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for (*r*).

Copyhold lands conveyed to the promoters to be enfranchised.

Compensation for enfranchisement.

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Lord of the manor to enfranchise on payment of compensation.

Enfranchisement by deed poll in certain cases.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of

Apportionment of copyhold rents.

(*r*) The compensation must be assessed on the value of the land when taken, not on the improved value of the land by reason of the undertakers' works, no step having been taken for thirteen years by the company to obtain enfranchisement (*Lowther* v. *Caledonian Rail. Co.*, [1892] 1 Ch. 73). The compensation is to be assessed as on the expiration of a month after entry and not as when the enfranchisement is completed (*Re Salisbury* (*Marquis*) *and L. & N. W. Rail. Co.*, [1892] 1 Ch. 75).

The lord of a manor conveyed certain copyholds to a corporation and negotiations followed for their enfranchisement. In arbitration proceedings the lord claimed compensation for loss of quittances, which were customary charges of 4*d.* for every receipt demanded by a copyholder for any payment made by him. It was held that the quittances came within the section so as to be a matter for compensation, and that interest at 4 per cent. on the compensation money, calculated from the date of the obligation to enfranchise, was payable by the corporation after deducting any rents paid to the lord by the corporation (*In re Duke of Northumberland and Tynemouth Corporation*, [1909] 2 K. B. 374; 73 J. P. 326). See also *Ecclesiastical Commissioners* v. *L. & S. W. Rail. Co.*, *ante*, p. 1352.

A town council proposed to purchase copyhold land for market purposes and the L. G. B. drew attention to ss. 95 and 96 of the Lands Clauses Consolidation Act, 1845, which require enrolment and subsequent enfranchisement of copyhold lands. The Board pointed out that it seemed to be fully established in *Lowther* v. *Caledonian Rail. Co.*, *supra*, that s. 96, so far as it requires enfranchisement, is distinctly obligatory in effect.

any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Common lands.

And with respect to any such lands being common or waste lands, be it enacted as follows (*s*):

Compensation for common lands, where held of a manor, etc. how to be paid.

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the Bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Lord of the manor, etc. to convey to the promoters of the undertaking, on receiving compensation for his interest.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Deed poll to be executed in certain cases.

Compensation for common lands where not held of a manor, how to be ascertained.

101. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall (*t*) be determined by agreement between the

(*s*) This part of the Act has been amended in some important particulars by the Commonable Rights Act, 1882, *post*, p. 1702.

(*t*) Nevertheless an agreement entered into for the determination of the compensation otherwise than as hereinafter provided is valid and may be enforced (*Bee* v. *Stafford and Uttoxeter Rail. Co.* (1875), 23 W. R. 863).

promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee (*u*) to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor. A meeting of the parties interested to be convened.

103. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties. Meeting to appoint a committee.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests (*x*), but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof. Committee to agree with the promoters of the undertaking.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation. Disputes to be settled as in other cases.

106. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such If no committee be appointed, the amount to be determined by a surveyor.

(*u*) The court has no jurisdiction to inquire whether the committee are properly constituted. It is sufficient that it is a *de facto* committee (*Salmon* v. *Edwards*, [1910] 1 Ch. 552; 74 J. P. 177).

(*x*) See *Fox* v. *Amherst* (1875), L. R. 20 Eq. 403; *Nash* v. *Coombs* (1868), L. R. 6 Eq. 51. As to apportionment in case the majority think this provision inadequate, see ss. 15—17 of the Inclosure Act, 1854. Special provision being thereby made for the apportionment of claims, no action lies for an apportionment (*Richards* v. *De Winton*, [1901] 2 Ch. 566; 65 J. P. 696; settled on appeal, [1903] 1 Ch. 507; and see *Salmon* v. *Edwards*, *supra*).

As to the application of compensation money for recreation grounds and field gardens, see the Commonable Rights Act, 1882, s. 3, *post*, p. 1704.

committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

Upon payment of compensation payable to commoners the lands to vest.

107. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the Bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof (*z*); and it shall be lawful for the Court of Chancery, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Lands in mortgage.

And with respect to lands subject to mortgage, be it enacted as follows (*a*):

Power to redeem mortgages.

108. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act; and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct; or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct (*b*).

(*z*) Compliance with these provisions is a condition precedent to the right to interfere with the rights of the commoners, and if the rights of any commoner are disturbed before such compliance he may maintain an action (*Stoneham* v. *L. B. and S. C. Rail. Co.* (1872), L. R. 7 Q. B. 1).

(*a*) As to equitable mortgagees and their rights, see *Martin* v. *L. C. and D. Rail. Co.* (1866), L. R. 1 Ch. 501. As to a mortgagee's rights when promoters have obtained possession without notice to him, see *Cooke* v. *London C. C.*, p. 1362, *post*.

(*b*) Interest is payable under this section from the time when possession might have been taken if a good title could be shown. In the case of land subject to mortgage interest is payable by the vendor to the mortgagee in lieu of notice (*Spencer Bell* v. *L. & S. W. Rail. Co.* (1885), 33 W. R. 771).

109. If, in either of the cases aforesaid, upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of mortgage money on refusal to accept.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Sum to be paid when mortgage exceeds the value of the lands.

111. If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this Act in like cases; and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Deposit of such sum when refused on tender.

112. If a part only of any such mortgaged land be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the

Sum to be paid where part only of mortgaged lands taken.

value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other; and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee (*c*) in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of such sum when refused on tender.

113. If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this Act in the case of moneys required to be deposited in such Bank; and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof, (as the case may be,) and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Powers of mortgagee for recovery of residue of mortgage debt.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs, in case of difference, to be taxed, and payment thereof

(*c*) An arbitrator cannot determine that the money should be paid to any one other than the mortgagee (*Ex parte Strabane R. D. C.* (*No.* 1), [1910] 1 I. R. 135).

enforced, in the manner herein provided with respect to the cost of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained (*d*).

Rent-charges.

And with respect to lands charged with any rent service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Consideration to be paid for release of lands from rent-charges.

115. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Release of part of land from charge.

116. If part only of the lands charged with any such rent service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank, in the manner her inbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment or incumbrance or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on lands not taken.

118. If any such lands be so released from any such charge or incumbrance or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to

(*d*) The promoters will be restrained by injunction from proceeding until the value of the mortgagee's interest has been ascertained and paid or secured (*Ranken* v. *East and West India Docks* 1849), 19 L. J. Ch. 153; 12 Beav. 298).

the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Leases.

And with respect to lands subject to leases, be it enacted as follows:

Where part only of lands under lease taken, the rent to be apportioned.

119. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land whch shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease (*e*).

Tenants to be compensated.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works.

(*e*) An interest created by an owner after notice to treat is not a subject for compensation (*Re Marylebone Improvement Act* (1871), L. R. 12 Eq. 389; *Wilkins* v. *Birmingham Corporation* (1884), 25 Ch. D. 78; 48 J. P. 231), even if created in land adjoining the land purchased which may be injuriously affected (*Mercer* v. *Liverpool, St. Helen's and South Lancashire Rail. Co.*, [1904] A. C. 461; 68 J. P. 533).

Agreement to an apportionment of rent under this section does not preclude the party from requiring the whole to be taken (*Lavers* v. *London C. C.* (1905), 69 J. P. 362; 93 L. T. (N.S.) 233).

If reversion to the whole has been acquired by the undertakers by private agreement before obtaining their Act they may exercise their compulsory powers afterwards against the tenant in respect of part only without the tenant being able to insist on his interest in the whole being taken (*Stevenson* v. *North British Rail. Co.* (1902), 4 F. 244).

As to the date from which the apportioned rent becomes payable, see *Ball* v. *Graves* (1887), 18 L. R. Ir. 224. It runs from the date of the apportionment (*Re Secretary of State for War and Hurley's Contract*, [1904] 2 I. R. 354).

121. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices (*g*), in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Compensation to be made to tenants from year to year, etc.

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power, and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year, lease or grant to be produced.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act (*h*).

Limit of time for compulsory purchase.

(*g*) That is, if the land be taken (*R.* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1855), 4 El. & Bl. 88; 2 W. R. 591; *Knapp* v. *L. C. & D. Rail. Co.* (1863), 32 L. J. Ex. 236; 8 L. T. (N.S.) 541); but if the lands are injuriously affected, the proceedings are under s. 68, *ante*, p. 1339 (*R.* v. *Sheriff of Middlesex* (1862), 31 L. J. Q. B. 261; and see *R.* v. *Stone* (1866), L. R. 1 Q. B. 529; 30 J. P. 488; *Bexley Heath Rail. Co.* v. *North*, [1894] 2 Q. B. 579; 58 J. P. 832). The complaint need not be made within six months under 11 & 12 Vict. c. 43, s. 11 (*R.* v. *Hannay* (1875), 44 L. J. M. C. 27; 39 J. P. 534; *R.* v. *Edwards, ante*, p. 1328). The jurisdiction of the justices is limited to determining the amount of the compensation on the basis of the interest alleged by the tenant, and does not extend to inquiring whether that interest is his true interest; but in determining the compensation the justices have jurisdiction to inquire, and are bound to inquire, whether the claimant has been required to give up possession of the land before the expiration of his term or interest, that being a condition precedent to the right to compensation (*G. N. Rail. Co.* v. *Tillett*, [1902] 1 K. B. 874; 66 J. P. 742). Compensation for the residue of a lease which will expire in less than a year must be determined by justices under this section, and not by arbitration (*R.* v. *G. N. Rail. Co.* (1877), 2 Q. B. D. 151; 41 J. P. 197). It is otherwise with regard to the interest of a tenant having an agreement for a lease for years void at law, but equivalent to a lease in equity (*Sweetman* v. *Metropolitan Rail. Co.* (1864), 10 L. T. (N.S.) 156; 1 H. & M. 543; *Rogers* v. *Hull Dock Co.* (1865), 34 L. J. Ch. 165; 10 Jur. (N.S.) 1245; *In re King* (1873), L. R. 16 Eq. 521).

If a notice to treat be given, but nothing done thereunder, and the lands are afterwards taken under s. 85, then the interest of the tenant at the time when the lands are so taken is to be considered, and not his interest at the time when the notice to treat was given (*R.* v. *Kennedy*, [1893] 1 Q. B. 533; 57 J. P. 346). See *Bexley Heath Rail. Co.* v. *North*, *supra*.

(*h*) It is sufficient if notice to treat is given within the three years. See *Salisbury* v. *G. N. Rail. Co.* (1852), 17 Q. B. 840. In computing the time, the date on which the special Act received the Royal Assent must be excluded, but the day on which the notice to treat is given must be included (*Goldsmiths Co.* v. *West Metropolitan Rail. Co.*, [1904] 1 K. B. 1; 68 J. P. 41). The L. G. B. do not ordinarily allow a longer period than three years in cases of compulsory purchase under s. 176 of the P. H. A., 1875. See notes to that section in Vol. I.

Interests omitted to be purchased.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows :

Purchase by promoters of the undertaking, after entry on lands, of interests the purchase whereof may have been omitted by mistake.

124. If at any time after the promoters of the undertaking shall have entered (*i*) upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence (*k*) have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months (*l*) after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

Mesne profits to be accounted for.

How value of such interests and *mesne* profits shall be estimated.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such interests.

126. In addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such

(*i*) The mere fact that the promoters have already taken possession of the property does not preclude them from their statutory right to give notice to treat (*Cooke* v. *London C. C.*, [1911] 1 Ch. 604; 75 J. P. 309).

(*k*) As to what amounts to mistake or inadvertence within the meaning of this section, see *Martin* v. *L. C. & D. Rail. Co.* (1866), L. R. 1 Ch. 501; *Stretton* v. *G. W. and Brentford Rail. Co.* (1870), L. R. 5 Ch. 751; *Hyde* v. *Manchester Corporation* (1852), 16 Jur. 180; *Thomas* v. *Barry Dock and Rail. Co.* (1888), 5 T. L. R. 360; *Omagh U. D. C.* v. *Henderson*, [1907] 2 I. R. 310. As to the effect of the section, see *Salisbury* (*Marquis*) v. *G. N. Rail. Co.* (1859), 28 L. J. C. P. 40; 5 C. B. (N.S.) 174; *Jolly* v. *Wimbledon and Dorking Rail. Co.* (1862), 1 B. & S. 807; 31 L. J. Q. B. 85.

(*l*) The six months do not run from a judgment referring the matter to arbitration, but from the award in the arbitration (*Caledonian Railway* v. *Davidson*, [1903] A. C. 22).

It has been held that the corresponding section of the Lands Clauses Consolidation (Scotland) Act, 1845, does not apply to cases in which the promoters do not, prior to the expiry of the period allowed for compulsory purchase, intend to acquire the omitted estate, right, interest or charge (*Davidson's Trustees* v. *Caledonian Rail. Co.* (1894), 21 Ct. of Sess. Cas. (4th ser.) 1060).

estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full (*m*) costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Sale of superfluous land.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows (*n*):

* * * * *

Lands not in a town or built upon, etc. to be offered to owner of lands from which they were originally taken, or to adjoining owners.

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town (*o*), or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of pre-emption to be claimed within six weeks from offer.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made, and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Evidence of refusal, etc. to exercise right.

Differences as to price to be settled by arbitration.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not

(*m*) As between solicitor and client (*Hyde* v. *Manchester Corporation* (1862), 12 C. B. 475).

(*n*) Section 127 is not incorporated with the P. H. A., 1875. See s. 176 of that Act, *ante*, p. 415, and note (*d*), *ante*, p. 419. As to what are superfluous lands, see *Betts* v. *G. E. Rail. Co.* (1880), 49 L. J. Ex. 197; 44 J. P. 281; *In re Metropolitan District Rail. Co. and Cosh* (1879), 13 Ch. D. 607; 44 J. P. 393; *Hooper* v. *Bourne* (1879), 5 App. Cas. 1; 44 J. P. 327; *L. & S. W. Rail. Co.* v. *Gomm* (1882), 20 Ch. D. 562; *Hobbs* v. *Midland Rail. Co.* (1882), 20 Ch. D. 418; *Thackeray and Young's Contract* (1889), 40 Ch. D. 34; *Ray* v. *Walker*, [1892] 2 Q. B. 88; *Dunhill* v. *N. E. Rail. Co.*, [1896] 1 Ch. 121; 60 J. P. 228; *Brown* v. *North British Railway* (1906), 8 F. 534; *In re L. & Y. Rail. Co. and Earl of Derby's Contract* (1909), 100 L. T. 44. The vesting of superfluous lands under s. 127 takes place by way of conditional limitation and not of forfeiture (*Miller* v. *Waterford Harbour Commissioners*, [1904] 2 I. R. 421).

(*o*) See s. 93, note (*o*), *ante*, p. 1351; also note (*h*) to s. 175 of the P. H. A., 1875, as to right of pre-emption. The present section apparently applies to lands purchased by a district council under s. 175 of the P. H. A., 1875, as well as to land acquired compulsorily under s. 176 of that Act.

agree as to the price thereof, then such price shall be ascertained by arbitration and the costs of such arbitration shall be in the discretion of the arbitrators.

Lands to be conveyed to the purchasers.

131. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received (*p*).

Effect of the word "grant" in conveyances.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking, and their successors, from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Until completion of works, promoters shall make good any deficiency of land tax and poor's rate caused by lands being taken.

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of

(*p*) The promoters may insert restrictive covenants in the conveyance (*In re Higgins and Hickman* (1882), 21 Ch. D. 95; 46 J. P. 805).

such lands having been taken or used for the purposes of the works; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax (*q*). Land tax may be redeemed.

Notices.

134. And be it enacted, that any summons or notice (*r*), or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters. Service of notices upon promoters.

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to Tender of amends. Payment into court.

(*q*) But the promoters are not liable to be rated (*London Corporation* v. *St. Andrew's, Holborn* (1867), L. R. 2 C. P. 574). As to this section, see *East London Rail. Co.* v. *Whitechurch* (1874), L. R. 7 H. L. 81; 38 J. P. 484; *Stratton* v. *Metropolitan Board of Works* (1875), L. R. 10 C. P. 76; 39 J. P. 167. Where the works consisted in making new streets, it was held that the works were completed within the meaning of this section when the streets were fully made, and such of the lands taken as might be liable to assessment had become assessable, and that the deficiency was to be computed from time to time by comparing the assessed value at the time of the special Act of the lands taken with the assessed value at the time of computation of such of the lands taken as might have again become assessable (*Governor, etc. of Poor of City of Bristol* v. *Bristol Corporation* (1887), 18 Q. B. D. 549; 51 J. P. 676). The poor rate referred to in this section includes sums raised for borough rate and county rate, as well as for poor law purposes properly so called (*Farmer* v. *L. & N. W. Rail. Co.* (1888), 20 Q. B. D. 788). And see *Associated Newspapers, Ltd.* v. *London Corporation*, [1914] 2 K. B. 603. In the county of London it includes only so much of the general rate as represents the poor rate (*Islington Borough Council* v. *London School Board*, [1903] 2 K. B. 354; 68 J. P. 35). Where a company purchased houses beyond the limits of deviation to obtain the withdrawal of opposition by the owners to the passing of the special Act, it was held that the deficiency in the poor rate in respect of the houses must be made good, and that it was immaterial that some of them were unoccupied (*Putney Overseers* v. *L. & S. W. Rail. Co.*, [1891] 1 Q. B. 440; 55 J. P. 422). For the construction of a similar clause in a local Act, see *Burrup* v. *L. & S. W. Rail. Co.* (1890), 63 L. T. (N.S.) 112; *St. Stephen's Churchwardens* v. *Great Northern & City Rail. Co.* (1902), 66 J. P. 373; 86 L. T. (N.S.) 390. Where the promoters of an undertaking took land and pulled down the houses thereon and were called upon under this section to make good the deficiency in the rates caused by their works, it was held that they were liable to pay the rates according to the full rateable value of the houses and lands taken, notwithstanding the fact that the former owners of some of the houses had made agreements with the rating authority of the district under s. 3 of the 32 & 33 Vict. c. 41, to pay the rates instead of the occupiers subject to a deduction of 25 per cent., and that the promoters were not entitled to make a similar deduction (*St. Leonard's, Shoreditch, Vestry* v. *London C.C.*, [1895] 2 Q. B. 104; 59 J. P. 423). It is doubtful whether the section has any application at all on a purchase of lands by agreement. See *Barony Parish Council* v. *Glasgow School Board* (1896), 23 Ct. of Sess. Cas. (4th ser.) 221.

This section does not apply to lands acquired by a local authority under the Housing Acts; and see the Housing, Town Planning, etc., Act, 1909, s. 34, *ante*, p. 891.

(*r*) For any purpose, and not only in an action (*In re South Yorkshire, etc. Rail. Co.* (1849), 18 L. J. Q. B. 333; 7 D. & L. 36). But see, as to the service of notices on local authorities, the P. H. A., 1875, ss. 266, 267, *ante*, p. 590.

pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Recovery of penalties.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows (*s*) :

Penalties to be summarily recovered before two justices.

136. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices . . .

137. [*Penalties to be levied by distress.*]

Distress, how to be levied.

138. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same ; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed to be applied in aid of the poor's rate of such parish, . . . (*t*).

Distress against the treasurer.

Notice to treasurer

Reimbursement of treasurer.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly ; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence ; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form, etc.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

142. [*Penalties to be sued for within six months.*] (*u*)

Penalty on witnesses making default.

143. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, at a time and place

(*s*) This part of the Act is printed as it is left unrepealed by the S. L. R. Acts, and by the S. J. A., 1884, which substitutes for the repealed sections the corresponding provisions of the S. J. Acts.

(*t*) The remainder of this section was repealed by the S. L. R. A., 1875.

(*u*) Repealed by the S. L. R. A., 1892. See now the S. J. A., 1848, s. 11.

mentioned in such summons, and to administer to him an oath to testify the truth in such matter ; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (*x*).

144. [*Form of conviction.*] (*y*)

145. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts (*z*). Proceedings not to be quashed for want of form, etc.

Appeal.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions . . . (*a*). Parties allowed to appeal to quarter sessions on giving security.

147. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions ; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable ; and they may make such order concerning the costs both of the adjudication and of the appeal, as they may think reasonable. Court to make such order as they think reasonable.

148. Provided always, that notwithstanding any thing herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839 ; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act ; and every magistrate by whom any order or conviction shall have been made Receiver of the metropolitan police district to receive penalties incurred within his district. 2 & 3 Vict. c. 71.

(*x*) This section is repealed as to England so far as relates to any matter to which the S. J. Acts apply (47 & 48 Vict. c. 43).

(*y*) This section and Schedule (C.) containing the form of conviction were repealed by the S. L. R. A., 1892.

(*z*) See the notes to the corresponding section of the P. H. A., 1875, as to *certiorari*, s. 262, *ante*, p. 579. This section does not apply in cases where acts are done without jurisdiction. See *South Wales Rail. Co.* v. *Richards* (1844), 13 L. J. Q. B. 310 ; *R.* v. *Edmundson* (1851), 17 Q. B. 67 ; *R.* v. *L. & N. W. Rail. Co.* (1863), 12 W. R. 208. As to the time within which a *certiorari* will be granted, see *R.* v. *Stewart* (1880), 5 Q. B. D. 179. As to the setting aside a verdict on the ground that the jury were treated to a champagne luncheon, see *Tanner* v. *Swindon, etc. Rail. Co.* (1881), 45 L. T. (N.S.) 209.

(*a*) The remainder of this section is repealed as to England by the S. J. A., 1884, s. 4,

shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

149. [*False evidence.*] (*b*)

* * * * * * (*c*)

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.).

FORM OF CONVEYANCE.

I , of , in consideration of the sum of paid to me [*or, as the case may be,* into the Bank of England [*or* Bank of Ireland] in the name and with the privity of the Accountant-General of the Court of Chancery, ex parte "the promoters of the undertaking [*naming them*], or to *A.B.*, of , and *C.D.*, of , two trustees appointed to receive the same], pursuant to the [*here name the special Act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or* constituted] by the said Act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal, the day of , in the year of our Lord .

SCHEDULE (B.).

FORM OF CONVEYANCE ON CHIEF RENT.

I , of , in consideration of the rentcharge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [*naming them*], incorporated [*or* constituted] by virtue of the [*here name the special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or* half-yearly, *as agreed upon*], portions, henceforth, on the [*stating the days*], clear of all taxes and deductions.

In witness whereof I hereunto set my hand and seal, the day of , in the year of our Lord .

(*b*) Repealed by the Perjury Act, 1911.

(*c*) The remaining sections of the Act relating to access to the special Act are not incorporated with the P. H. A., 1875. See s. 176, *ante*, p. 415.

THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 20.) (*d*)

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the making of Railways. [8th May, 1845.]

* * * * *

Recovery of damages and penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows (*e*):

Provision for ascertainment of damages not otherwise provided for.

140. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for (*f*), such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice on application, shall issue their or his warrant accordingly (*g*).

Enforcement by distress.

Distress against the treasurer.

141. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Notice to treasurer.

Reimbursement of treasurer.

Method of proceeding before justices in questions of damages, etc.

142. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

(*d*) The following sections of this Act are here set out as being incorporated with the Gasworks Clauses Act, 1847, s. 40, and the Waterworks Clauses Act, 1847, s. 74, *post*, pp. 1404, 1426.

(*e*) This part of the Act is printed as it is left unrepealed by the S. J. A., 1884, which substitutes for the repealed sections the corresponding provisions of the S. J. Acts. Most of the same sections are again repealed by the S. L. R. A., 1892.

(*f*) See *Swansea Corporation* v. *Harpur*, [1913] A. C. 597; 77 J. P. 381.

(*g*) These damages, costs, and expenses are now apparently civil debts within the S. J. A., 1879, ss. 6, 35, as being sums recoverable on complaint to a court of summary jurisdiction.

Publication of penalties.

143. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any byelaw of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

144. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any byelaw or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

145. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings (*h*) before two justices (*i*).

146. [*Penalties to be levied by distress.*]

147. [*Imprisonment in default of distress.*]

Distress, how to be levied.

148. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form, etc.

149. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

150. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, . . . (*k*).

151. [*Penalties to be sued for within six months.*] (*l*)

(*h*) See *Metropolitan Water Board* v. *Bunn*, [1913] 3 K. B. 181; 77 J. P. 353.

(*i*) The remainder of this section and the whole of the two following sections are repealed by the S. J. A., 1884, s. 4, and Schedule, and again by the S. L. R. A., 1892.

(*k*) The remainder of this section relating to extra-parochial places is repealed as obsolete by the S. L. R. A., 1875.

(*l*) This section is repealed by the S. J. A., 1884, s. 4, and Schedule, and again by the S. L. R. A., 1892. See now the S. J. A., 1848, s. 11.

152. If, through any act, neglect, or default, on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Damage to be made good in addition to penalty.

153. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (*m*).

Penalty on witnesses making default.

154. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him with all convenient despatch before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Transient offenders.

155. [*Form of conviction.*] (*n*)

156. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts (*o*).

Proceedings not to be quashed for want of form, etc.

Appeal.

157. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions . . . (*p*).

Parties allowed to appeal to quarter sessions, on giving security.

158. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

(*m*) This section is repealed so far as relates to any matter to which the S. J. Acts apply (47 & 48 Vict. c. 43).

(*n*) This section is repealed by the S. J. A., 1884, s. 4, and Schedule, and again by the S. L. R. A., 1892.

(*o*) See the notes to s. 262 of the P. H. A., 1875, *ante*, p. 579.

(*p*) The remainder of this section is repealed as to England by the S. J. A., 1884, s. 4, and Schedule. See now s. 6 of that Act, and the S. J. A., 1879, s. 31.

Receiver of metropolitan police district to receive penalties incurred within his district.

159. Provided always, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71.

160. [*False evidence.*] (*q*)

THE BATHS AND WASHHOUSES ACT, 1846.

(9 & 10 VICT. c. 74.) (*r*)

An Act to encourage the Establishment of Public Baths and Washhouses.

[26 August 1846.]

This Act may be adopted in boroughs and in parishes not within boroughs.

5 & 6 Will. 4, c. 76.

[**1.**] This Act may be adopted for any incorporated borough in England which is regulated under an Act passed in the sixth year of the reign of his late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also, with the approval of one of her Majesty's principal Secretaries of State (*s*), for any parish in England not within any such incorporated borough (*t*).

Interpretation.

2. In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

[" *Parish* " . . .] (*u*)

"Borough."

" Borough " shall mean city, borough, port, cinque port, or town corporate :

(*q*) Repealed by the Perjury Act, 1911.

(*r*) As to the adoption of this Act and the exercise of the powers conferred by it upon urban authorities, see the P. H. A., 1875, s. 10, *ante*, p. 41. This Act is amended by 10 & 11 Vict. c. 61; 41 & 42 Vict. c. 14; 45 & 46 Vict. c. 30; and 62 & 63 Vict. c. 29, all of which are set out, *post*, pp. 1438, 1669, 1705, 1948.

In some places the provision of public bathing places and drying grounds is regulated by ss. 136—141 of the Towns Improvement Clauses Act, 1847. See also the P. H. A., 1907, s. 92, as to the provision of bathing sheds.

(*s*) Now the L. G. B. See 34 & 35 Vict. c. 70, *post*, p. 1555. Approval is now only required in the case of rural parishes. There is no provision in the Act for the rescission of a resolution of adoption.

(*t*) But see the P. H. A., 1875, s. 10, *ante*, p. 41, which gives the urban authority power to adopt an Act under the statute to the exclusion of any other authority within their district, and as to rural parishes, see the L. G. A., 1894, s. 7.

(*u*) The definition of parish was repealed by the S. L. R. A., 1875. The word parish

[" *Ratepayers* " . . .] (*x*).

" Churchwardens " shall mean also chapelwardens or other persons discharging the duties of churchwardens : "Churchwardens."

" Overseers " shall mean also any persons authorised and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor : "Overseers."

" Vestry " shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry . . . (*y*) elected under the Vestries Act, 1831, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry : "Vestry." 1 & 2 Will. 4, c. 60.

" Commissioners " shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners : "Commissioners."

" Clerk " shall mean, as regards an incorporated borough, the town clerk of such borough ; and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners : "Clerk."

" Justice " shall mean justice of the peace for the county, riding, division, liberty, borough, or place, where the matter requiring the cognizance of justices shall arise : "Justice."

" Lands " shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure : "Lands."

Words importing the masculine gender shall include the feminine : Gender.

Words of the plural number shall include the singular, and words of the singular number shall include the plural (*z*). Number.

* * * * *

Income to be carried to borough fund, and separate accounts kept.

4. The income arising from the baths and washhouses and open bathing places in any borough shall be paid to the credit of the borough fund thereof, and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities, with reference to the execution of this Act, to be called " The Public Baths and Washhouses Account " (*a*).

Adoption of Act by vestry of parish not within a borough.

5. (*b*) Upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, not being within any such incorporated borough, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish (*c*) shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the

now includes a place for which a separate poor rate is or can be made, or a separate overseer is or can be appointed (52 & 53 Vict. c. 63, s. 5, superseding 29 & 30 Vict. c. 113, s. 18). See also 10 & 11 Vict. c. 61, *post*, p. 1438.

(*x*) This definition was also repealed by the S. L. R. A., 1875. It is replaced by 10 & 11 Vict. c. 61, *post*, p. 1438.

(*y*) The S. L. R. A., 1875, repealed the part of this clause which, as originally enacted, contained a reference to 59 Geo. 3, c. 17. See also the amendment of the definition in 10 & 11 Vict. c. 61, *post*, p. 1438.

(*z*) Section 3, authorising councils of boroughs to adopt this Act, is repealed by the S. L. R. A., 1875 ; as also is the whole of s. 4 except the part set out in the text.

(*a*) This section is printed as in part repealed by the S. L. R. A., 1875. Expenses in the case of a borough are now paid out of the district fund and general district rate as in the case of other urban districts, except in the special cases provided for by ss. 207 and 208 of the P. H. A., 1875.

With respect to the application of the income arising from the baths, etc. the L. G. B. have stated that they are advised that the word " income " as here used may probably be construed as meaning the net proceeds and not the gross receipts.

(*b*) These provisions are not affected with respect to parishes in a rural sanitary district.

(*c*) The Act is now adopted in rural parishes by the parish meeting, which is convened in manner provided by the L. G. A., 1894, s. 45 (3).

parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given, at least seven days before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of her Majesty's principal Secretaries of State (*d*) for his approval, and as soon as such approval shall have been signified in writing under the hand of any such Secretary of State, such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish: Provided always, that no such resolution of the vestry shall be deemed to be carried, unless at least two-thirds of the number of votes given on the question, according to the usual manner of voting at such vestry, shall have been given for such resolution.

Appointment of commissioners for carrying Act into execution.

6. In such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third, (to be determined among themselves,) shall go out of office yearly, but shall be eligible for immediate re-appointment.

Resignation of commissioners.

7. Any commissioner may at any time resign his office as a commissioner, on giving seven days notice in writing of his intention to resign to the clerk, and also to the churchwardens.

Vacancies.

8. Any vacancies in the commissionership may be filled up by the vestry, when and as the vestry shall think fit.

Meetings of commissioners.

9. The commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified.

Special meetings of commissioners.

10. The commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours notice, the commissioners for any special purpose therein named, and to meet at such times as shall be therein named.

Quorum of meetings of commissioners.

11. At all meetings of the commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then any number not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners.

Commissioners may appoint and remove officers, and pay their salaries, and may hire an office.

12. The commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Minutes of proceedings of commissioners.

13. All orders and proceedings of the commissioners shall be entered in books, to be kept by them for that purpose, and shall be signed by the commissioners, or any two of them; and all such orders and proceedings so entered and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all

(*d*) See note (*s*), *ante*, p. 1372.

such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever.

14. The commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

Commissioners to keep accounts

15. The vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry (*e*).

Auditors to be appointed yearly, who shall examine the accounts, and report to vestry.

16. The expenses of carrying this Act into execution in any parish not within any such incorporated borough, to such amount as shall be from time to time sanctioned by the vestry, shall be chargeable upon and paid out of the moneys to be raised or applicable for the relief of the poor of the parish (*f*).

Expenses of executing Act to be paid out of the poor rate.

17. For defraying the expenses which shall have been or shall be incurred in carrying this Act into execution in the parish the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts.

Overseers to levy, as part of the poor rate, such sums as vestry shall deem necessary to pay expenses, and pay the same to person appointed by commissioners.

18. The money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and washhouses and open bathing places in the parish, shall be applied by the commissioners in or toward defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all moneys borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any

Moneys raised, and the income arising from baths, etc. in the parish, to be applied towards defraying expenses.

(*e*) These auditors are superseded by the P. H. A., 1875, ss. 247 and 248, *ante*, pp. 541, 547.

(*f*) Out of the general district rate, when the urban authority are the commissioners. See the P. H. A., 1875, s. 207, *ante*, p. 468; and see note to s. 4 of this Act, *ante*, p. 1373.

Surplus to be paid to overseers in aid of poor rate.

surplus money at the disposal of the commissioners they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish (*g*).

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of Secretary of State.

19. The vestries of any two or more neighbouring parishes (*h*) which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner, not inconsistent with the provisions of this Act, and for such time, as they shall mutually agree; and for that purpose it may, with the approval of such Secretary of State (*i*), be agreed on between such vestries that any public baths and washhouses and open bathing places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and washhouses and open bathing places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively, in the same proportions as those in which such parishes shall be liable to such expenses.

Incorporation of commissioners.

20. The commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "The Commissioners for Public Baths and Washhouses in the Parish of ( ) in the County of ( )," and by that name may sue and be sued in all courts, and before all justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act.

Councils and commissioners, etc. may borrow money for the purposes of the Act, with the approval of the Treasury.

21. For carrying this Act into execution in any borough or parish respectively, the council, with the approval of the Treasury (*k*), and the commissioners, with the sanction of the vestry, and also with the approval of the Treasury, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the rates for the relief of the poor of the parish (*l*), the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly.

(*g*) To the district fund account in the case mentioned in the last note.

(*h*) It is doubtful whether a district and parish council may combine. See P. H. A., 1875, s. 285, *ante*, p. 616, and L. G. A., 1894, s. 57, *ante*, p. 1043.

(*i*) See note (*s*), *ante*, p. 1372.

(*k*) The L. G. B. is now substituted for the Commissioners of the Treasury by the P. H. A., 1875, s. 234, *ante*, p. 526; and see 41 & 42 Vict. c. 14, s. 9, *post*, p. 1670.

(*l*) See further, the P. H. A., 1875, s. 233, *ante*, p. 519. As to repayment out of moneys paid into court under s. 69 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 1340, see *Re Derby Municipal Estates* (1875), 3 Ch. D. 289.

Application to the L. G. B. for sanction to the borrowing of money for the purposes of the Baths and Washhouses Acts should be made by resolution of the council, of which a copy should be forwarded by the clerk, together with plans and elevations of the proposed buildings, detailed estimates of cost, and particulars (in prescribed form) of existing debt for all purposes of the district. Proof will also be required of the due adoption of the Acts. It is advisable also to forward a plan of the town showing the situation of the site, and to explain whether terms have provisionally been come to with the owner. The Board usually allow the following periods for the repayment of loans for purposes of public baths: sixty years for land; thirty years for buildings and swimming baths; twenty years

22. The commissioners for carrying into execution an Act passed in the second session of the fifth year of the reign of her Majesty, intituled "An Act to authorise the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries, and employment of the poor; and to amend the Acts authorising the issue of Exchequer bills for the like purposes," may from time to time make to the . . . commissioners of any such parish respectively, for the purposes of this Act, any loan under the provisions of the recited Act or the several Acts therein recited or referred to, upon security of . . . the rates for the relief of the poor of the parish . . . (*m*).

The Public Works Loan Commissioners may advance money for the purposes of this Act.

5 & 6 Vict. c. 9.

23. The provisions of the Companies Clauses Consolidation Act, 1845 (*n*), with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of byelaws, subject to the provisions hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply, as regards a borough, to the council and, as regards a parish, to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to this Act be deemed to be required or directed to be made or executed, as regards a borough, under the common seal of the mayor, aldermen, and burgesses, and, as regards a parish, under the common seal of the commissioner; and so much of such provisions as are applicable to the "secretary of the company" shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts, as regards a borough, the burgesses, and, as regards a parish, the ratepayers, shall have the privileges of shareholders.

Provisions of 8 & 9 Vict. c. 16, as to borrowing money, accountability of officers, byelaws, damages, and penalties, incorporated with this Act.

24. In any such borough the council, with the approval of the Treasury (*o*), may from time to time appropriate for the purposes of this Act in the borough

Council may appropriate, with consent of the Treasury, lands vested in the mayor, etc.

for slipper baths and Turkish baths; fifteen years for a movable floor in a swimming bath; ten years for heating apparatus and fittings; and five years for towels, mats, etc. on first establishment.

(*m*) References in the section to the council of the borough and the borough fund were repealed by the S. L. R. A., 1875. The statute referred to is 5 & 6 Vict. c. 9. The Public Works Loan Commissioners may lend money for purposes of public baths and washhouses. See First Schedule to Public Works Loans Act, 1875.

(*n*) See these provisions, *ante*, p. 1312.

(*o*) Now the L. G. B. See the Local Authorities (Treasury Powers) Act, 1906, *ante*, p. 1093. The Board have expressed the opinion that the section does not enable them to approve the appropriation of corporate land outside the borough. Probably procedure under the Municipal Corporations Acts would meet the difficulty in such a case.

The above-mentioned procedure is made available to urban district councils other than town councils by the P. H. A., 1875, s. 10.

See also the P. H. A., 1907, s. 95, for a general provision as to appropriating lands vested in district councils to purposes other than those for which such lands were acquired. An urban district council proposed to erect a swimming bath in a public park which had been presented to them, and applied for sanction to a loan for the purpose. Upon an inspection of the deed of gift, however, the L. G. B. stated that it was not clear to them that the council could, without the consent of the donor, use the proposed site for the purposes of a swimming bath. If the site had already been set apart for recreation ground purposes, the Board would have no power to sanction its appropriation for purposes of the Baths and Washhouses Acts, in view of the decision in *Att.-Gen.* v. *Sunderland Corporation* (1876), 2 Ch. D. 634; 40 J. P. 564. The council might, however, if the donor agreed to the proposal, provide the bath in pursuance of their powers under the P. H. A., 1875, s. 164, as a part of their pleasure ground, but in that case it was not clear that the district council would have any power to charge for admission.

Commissioners may, with approval of vestry, etc., appropriate lands belonging to parish.

any lands vested in the mayor, aldermen and burgesses; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Commissioners for England and Wales (*p*), may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the commissioners, with the approval of the vestry, and in any such borough the council, may from time to time contract (*q*) for the purchasing or renting of any lands necessary for the purposes of this Act, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish (*r*).

Council or commissioners may contract for purchase or hire of lands.

Councils and commissioners may erect, etc. public baths and washhouses and open bathing places.

25. The council and commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be respectively, erect any buildings suitable for public baths and washhouses, and as to such washhouses either with or without open drying grounds, and make any open bathing places (*s*), and convert any buildings into public baths and washhouses, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite fittings, furniture, and conveniences.

Councils and commissioners may enter into contracts for the purposes of this Act.

26. The council and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such public baths and washhouses and open bathing places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose: Provided always, that no contract

(*p*) Now the L. G. B. See 34 & 35 Vict. c. 70, *post*, p. 1555.

(*q*) Compulsory powers can only be acquired by Provisional Order under s. 176 of the P. H. A., 1875, *ante*, p. 415.

(*r*) The power conferred by this section to purchase or rent lands is extended to lands in the immediate neighbourhood of the borough or parish by 45 & 46 Vict. c. 30, s. 3, *post*, p. 1705. In urban districts these powers must be exercised by the urban sanitary authority. See the P. H. A., 1875, s. 10, *ante*, p. 41. Compare generally the powers of s. 136 of the Towns Improvement Clauses Act, 1847, and s. 5 of the Education (Administrative Provisions) Act, 1909.

(*s*) Extended to covered swimming baths by 41 & 42 Vict. c. 14, s. 3, *post*, p. 1670. The Act cannot be adopted for the purpose of providing baths only, but when adopted, the council may exercise their powers only to the extent of providing such baths as are authorised by the Act.

The L. G. B. have informed an urban district council that the provision of public baths for medical purposes would appear to be outside their powers under the Baths and Washhouses Acts.

The L. G. B. have stated that the letting of baths by an urban district council for an annual rent in consideration of their receiving the fees is not a legal arrangement. The Board have also stated that the provision of dressing-houses on the seashore cannot be regarded as the provision of an open bathing place within the meaning of the Baths and Washhouses Acts. A town council proposed to purchase the exclusive right of using bathing vans on foreshore which was held by private persons, together with vans and other equipment:—*Held*, by the L. G. B., that ss. 21 and 25 did not authorise purchase, and that there was no authority enabling them to sanction a loan.

above the value or sum of one hundred pounds shall be entered into by the council or the commissioners for the purposes of this Act, unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or commissioners at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the council or commissioners to contract with the person offering the lowest price.

No contract above £100 to be entered into without notice, enabling persons to make tenders.

27. The council of any such borough, and the commissioners, with the approval of the vestry, of any such parish, may, if they shall think fit, contract for the purchase or lease of any baths and washhouses already or hereafter to be built and provided in any such borough or parish (*t*), and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any public baths and washhouses which have been already or may hereafter be built or provided in any such borough or parish (*t*), by private subscriptions or otherwise, may, with the consent of the council of any such borough, or with the consent of the commissioners and approval of the vestry of any such parish, and with the consent of the majority of the committee or other persons by whom they were appointed trustees, sell or lease the said baths and washhouses to the said council or commissioners respectively, or make over to them the management of such baths and washhouses; and in all such cases the baths and washhouses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act as fully as if they had been built or provided by the said council or commissioners; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish (*u*).

Council or commissioners may purchase existing baths, etc.

Trustees of such baths, etc. empowered to sell or lease them.

28. Any commissioners of waterworks, trustees of waterworks, water companies, canal companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, canals, reservoirs, wells, springs, and streams of water, and gasworks respectively, may in their discretion grant and furnish supplies of water or gas for such public baths and washhouses and open bathing places, either without charge or on such other favourable terms as they shall think fit (*x*).

Power to water and gas companies to supply water and gas to baths, etc. either without charge or on reduced terms.

29. Nothing in this Act contained shall render any member of the council of any borough or any commissioner personally, or any of their lands, goods, chattels, or moneys, (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or commissioners respectively in pursuance of this Act,) liable to the payment of any

Councillors and commissioners not to be personally liable.

(*t*) Or in the immediate neighbourhood of such borough or parish (45 & 46 Vict. c. 30, s. 2).

(*u*) In an Irish case decided upon 9 & 10 Vict. c. 87, s. 27, which is similar to this clause in the text, it was held by the Lord Chancellor of Ireland, confirming the decision of the Master of the Rolls, that where a town council contracted to purchase baths and washhouses commenced by a private society on lands held under a sub-lease, being portion of lands comprised in a demise from the owner in fee, so that they were subject to a rent above that in the sub-lease as well as to the covenants and conditions in the original lease, they were not compellable to complete their contract, as it would have been a breach of trust on their part to purchase lands the interest in which might be lost by the default of others (*Mulholland* v. *Belfast Corporation* (1859), 9 Ir. Ch. R. 204, 292).

(*x*) See the P. H. A., 1875, ss. 52 and 65, and notes thereto in Vol. I. (*ante*, pp. 123, 139). It is competent to a council exercising the powers of this Act to sink a well to supply public baths with water, although the district is within the limits of a water company having parliamentary powers.

sum of money as or by way of compensation or satisfaction for or in respect of any thing done or suffered in due pursuance of this Act (*y*).

Appeals against orders of councils and commissioners.

8 & 9 Vict. c. 16.

30. Every person who shall feel aggrieved by any byelaw, order, direction, or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as, under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with this Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty (*z*).

Councils, etc. empowered to make sale and exchange of lands, with consent of Treasury, etc.

31. The council, with the approval of the Treasury (*a*), and the commissioners appointed under this Act, with the approval of the vestry and of the Treasury, respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the commissioners respectively for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes; and the mayor, aldermen, and burgesses, or the commissioners, may convey the lands so sold or exchanged accordingly.

When baths, etc. are considered unnecessary or too expensive, they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor rate.

32. Whenever any public baths or washhouses or open bathing places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary, or too expensive to be kept up, the council or commissioners, with the approval of the Treasury (*a*), may sell the same for the best price that can reasonably be obtained for the same; and the mayor, aldermen, and burgesses, or the commissioners, shall convey the same accordingly; and the purchase money shall be paid to such person as the council or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish (*b*).

Management to be vested in councils and parish commissioners.

33. The general management, regulation, and control of the public baths and washhouses and open bathing places established under this Act shall, subject to the provisions of this Act, be, as to any borough, vested in and exercised by the council, and, as to any parish, vested in and exercised by the commissioners (*c*).

Byelaws for regulating baths and washhouses.

34. The byelaws which the council and commissioners respectively may from time to time make, alter, repeal, and enforce, shall include such byelaws for the management, use, and regulation of the public baths and washhouses and open bathing places, and of the persons resorting thereto respectively,

(*y*) See the notes to s. 265 of the P. H. A., 1875, *ante*, p. 581.

(*z*) See s. 23, *ante*, p. 1377.

(*a*) See note (*p*) to s. 24, *ante*, p. 1378. In a case in which washhouses were found to be unremunerative, the L. G. B. advised a metropolitan vestry (before the passing of the London Government Act, 1899), that it was apparently competent to them to close the washhouses and appropriate the buildings for other purposes of the Baths and Washhouses Acts, or, after obtaining the required approval, to sell the washhouses if they were considered to be unnecessary or too expensive. At the same time, the Board stated that the advice must not be understood as implying that the unremunerative character of washhouses would necessarily in itself constitute a sufficient reason for such a step.

(*b*) To the district fund account in the case where the authority has been transferred to the urban authority under 21 & 22 Vict. c. 98, s. 47, or the P. H. A., 1875, s. 10, *ante*, p. 41. Similar provisions as to sale are contained in s. 141 of the Towns Improvement Clauses Act, 1847.

(*c*) But see now the P. H. A., 1875, s. 10, *ante*, p. 41.

and for determining from time to time the charges (*d*) for the use of such baths and washhouses and open bathing places respectively, as the council and commissioners respectively shall think fit; and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants, or by other persons, of any byelaw made by them respectively; and such byelaws shall make sufficient provision for the several purposes respectively (*e*) expressed in the Schedule (A.) to this Act: Provided always, that no byelaw made under the authority of this Act shall be of any legal force until the same shall have received the approval of one of her Majesty's principal Secretaries of State (*f*).

35. A printed copy or sufficient abstract of the byelaws relating to the use of the baths and open bathing places respectively shall be put up in every bath room and open bathing place respectively; and a printed copy or sufficient abstract of the byelaws relating to the use of the washhouses shall be put up in some convenient place near every washing tub or trough, or every pair of washing tubs or troughs, in every washhouse (*g*). Copies or abstracts of byelaws to be hung up in every bathroom, etc.

36. The number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the baths of any higher class, if but one, or of all the baths of any higher classes, if more than one, in the same building or buildings (*h*). Proportion of baths for the labouring classes.

* * * * *

38. For the recovery of the charges at such washhouses the officers, servants, and others having the management thereof may detain the clothes brought to be washed, or other goods and chattels, of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within seven days may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and Recovery of charges at washhouses.

(*d*) The model byelaws do not contain any clauses for determining the charges. It is considered that byelaws on the subject are rendered practically unnecessary by the provisions of s. 7 of 10 & 11 Vict. c. 61, and ss. 4 and 14 of 41 & 42 Vict. c. 14, and the Schedules to those Acts.

A local authority asked the L. G. B. whether, if they provided swimming baths or an open bathing place, they would be under an obligation to charge for admission. The Board replied that the question was one which they had no jurisdiction to decide, but it appeared to them that the Baths and Washhouses Act, 1846, contemplated that charges should be made by the authority for the use of baths provided by them.

(*e*) *Sic* in statute.

(*f*) Now the L. G. B. (34 & 35 Vict. c. 70, *post*, p. 1555). Model byelaws have been issued by the L. G. B. under this section, and s. 6 of 41 & 42 Vict. c. 14, *post*, p. 1670. See Mackenzie and Handford's Model Byelaws, Vol. 1, p. 311.

The L. G. B. have expressed the opinion that a local authority cannot by byelaws or regulations limit the use, at certain hours, of a swimming bath to children attending public elementary schools. If, however, a bath is part of a pleasure ground, the powers of the P. H. A., 1907, s. 76 (1) (b), might possibly be used to set apart for the purpose for a reasonable time that portion of the pleasure ground forming the bath.

(*g*) Similar provisions are contained in s. 140 of the Towns Improvement Clauses Act, 1847.

(*h*) The L. G. B. have in some cases required urban district councils to reconstruct their scheme when it has been proposed to erect buildings which will contravene the requirements of this section. See further, as to the proportion of washing accommodation for the labouring classes, 10 & 11 Vict. c. 61, s. 5, *post*, p. 1438, and compare s. 137 of the Towns Improvement Clauses Act, 1847. Sections 37 and 41, and Sched. (B.) to this Act, were repealed by the S. L. R. A., 1875. Section 37 and Sched. (B.) had also been repealed by 10 & 11 Vict. c. 61, s. 6. As to charges for use of baths, etc. see 10 & 11 Vict. c 61, s. 7, *post*, p. 1439.

the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person (*i*).

Penalty on officers taking fees beyond salaries, or being interested in contracts;

39. If any clerk or other officer, or any servant who shall be in anywise employed by any council or commissioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of any thing done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of anything done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council or commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of fifty pounds (*k*).

also on councillors or commissioners taking fees or accepting offices, or being interested in contracts.

Application of penalties.

40. Such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit, as regards a borough, of the borough fund, and, as regards a parish, of the rate for the relief of the poor thereof.

* * * * *

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.).

BYELAWS TO BE MADE IN ALL CASES.

For securing that the baths and washhouses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and washhouses and open bathing places, and security against accidents to persons using the open bathing places (*l*).

For securing that men, and boys above eight years old, shall bathe separately from women and girls, and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or commissioners.

In parishes. For regulating the procedure of the commissioners.

(*i*) Similar provisions are contained in s. 139 of the Towns Improvement Clauses Act, 1847.

(*k*) See the P. H. A., 1875, s. 193, *ante*, p. 455. See also, as to members of district councils, the provisions of the L. G. A., 1894, s. 46, *ante*, p. 1024, and the Public Bodies Corrupt Practices Act, 1889, *ante*, p. 793.

(*l*) The model byelaws do not contain any clauses for securing privacy, as the L. G. B. think that such privacy as may be reasonably necessary may, in the case of public washhouses, most effectually be secured by the structural arrangement of the premises. They state that in the case of an open bathing place, it is desirable that either by its situation, or by the erection of a suitable hoarding, fence or partition, the bathers should, as far as possible, be screened from the view of persons occupying premises in the vicinity or passing along any neighbouring thoroughfare. "Perhaps, also, the council may find it possible to provide separate dressing boxes for the bathers. Such means of securing privacy may, wherever practicable, be very properly adopted. But the small sum which the Schedule to the Act of 1847, as amended by s. 14 of the Act of 1878, has fixed as the price of admission to an open bathing place, will hardly justify expenditure in elaborate

THE MARKETS AND FAIRS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 14.) (*m*)

An Act for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating Markets and Fairs.

[23rd April, 1847.]

This Act to extend to such markets or fairs as shall be authorised by Acts hereafter to be passed which shall declare that this Act shall be incorporated therewith.

[**1.**] This Act shall extend only to such markets or fairs as shall be authorised by any Act of Parliament hereafter (*mm*) to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Interpretation.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

"The special Act." "Prescribed." "The lands." "The undertaking." "The undertakers."

2. The expression "the special Act," used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction or regulation of a market or fair, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the market or fair (*n*), and the works connected therewith, by the special Act authorised to be constructed or regulated; and the expression "the undertakers" shall mean the persons authorised by the special Act to construct or regulate the market or fair.

structural conveniences, and in most cases the Board assume that byelaws such as those which they have suggested for securing the privacy to persons using public baths could not easily be rendered applicable to an open bathing place.

"Nor have the Board been able to suggest a byelaw generally applicable for the purpose of providing security against accidents to persons using an open bathing place. Security against accident must very often depend upon the judicious choice of a situation for the bathing place. The provision of suitable means of rescue from danger is an obvious precaution which should not be overlooked, and among the byelaws which the Board have framed for determining the duties of the superintendent of an open bathing place, is one which requires the superintendent to keep ready and fit for use any life-saving apparatus which may be committed to his charge. But the rules which may in each case be imposed for the protection of bathers will derive their chief value from a careful consideration of the nature and special requirements of the locality; and the subject is, therefore, one which lies beyond the range of model byelaws intended for general use."

(*m*) The sections of this Act hereinafter set out, 12—16, 21—30, 31—41, are (in so far as they relate to markets) incorporated with the P. H. A., 1875, by s. 167, *ante*, p. 383. The Fairs Act, 1871, as affected by s. 27 of the L. G. A., 1894, enacts that the Secretary of State, on the representation of the district council, or the owner of any *fair* or of the district council, with the consent of the owner of such *fair* or the tolls payable in respect thereof, may order any *fair* to be abolished. His order is to be published in the London Gazette, and some local newspaper, and then the fair is to be abolished. By the Fairs Act, 1873, s. 6, which repealed 31 & 32 Vict. c. 51, he may order the day of holding the fair to be altered. Reference should be made to the Diseases of Animals Act, 1894, as amended by later Acts, and to the Orders made under those Acts, as affecting markets and fairs.

(*mm*) See *M'Call* v. *Mitchell*, [1911] S. C. (J.) 1.

(*n*) The P. H. A., 1875, s. 167, *ante*, p. 383, does not extend to a *fair*. As to what constitutes a fair, see *Collins* v. *Cooper* (1893), 57 J. P. 248; 68 L. T. (N.S.) 450; *Walker* v. *Murphy* (1913), 77 J. P. 365. See also the notes to ss. 166 and 168 of the Act of 1875.

Interpretation.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,) (*o*)

Number. Words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number:

Gender. Words importing the masculine gender shall include females:

"Person." The word "person" shall include a corporation, whether aggregate or sole:

"Lands." The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages, of any tenure:

"Lease." The word "lease" shall include (*p*) . . . an agreement for a lease:

"The market or fair." The expression "the market or fair" shall mean the market or fair, and the works connected therewith, by the special Act authorised to be constructed or regulated (*q*):

"Cart." The word "cart" shall include waggon, and also any carriage used wholly or chiefly for the conveyance of goods:

"Driver." The word "driver" shall include the carter or other person having the care of any cart:

"Cattle." The word "cattle" shall include horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine:

"Collector." The expression "the collector" shall mean the person appointed by the undertakers to collect the stallages, rents, or tolls authorised by the special Act, and shall include the assistants of the collector:

"Month." The word "month" shall mean calendar month:

"Superior courts." The expression "superior courts," when the matter submitted to the cognisance of the court arises in England . . . shall mean Her Majesty's superior courts of record at Westminster . . . (*p*).

"Oath." The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County." The word "county" shall include riding or other division of a county having a separate commission of the peace (*p*) . . . and it shall also include county of a city or county of a town:

"Justice." The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognisance of any such justice arises; and if such matter arise in respect of lands situated not wholly in any one jurisdiction, shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together (*p*):

"Two justices."

. . . . . .

"Quarter sessions." The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the market or fair, or the principal office thereof, for

(*o*) See the P. H. A., 1875, s. 316, *ante*, p. 649, as to the interpretation of terms in incorporated statutes. Sections 1—5 of this Act are not incorporated, but reference to them may be necessary to explain the terms used in later incorporated sections. They are, therefore, included here.

(*p*) Words relating to Scotland and Ireland only are here omitted.

(*q*) As to the meaning of "fair" under local Acts, see *Walker* v. *Murphy* (1913), 77 J. P. 365. And see note (*n*), *supra*.

the county or place in which the market or fair is situate, or for some division of such county having a separate commission of the peace.

Citing the Act.

And with respect to citing this Act, or any part thereof, be it enacted as follows:

Short title.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Markets and Fairs Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

5. For the purposes of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

Holding of market, etc.

And with respect to the holding of the market or fair, and the protection thereof, be it enacted as follows (*r*):

Before the market or fair shall be opened notice to be given by undertakers.

12. Before the market or fair shall be opened for public use the undertakers shall give not less than ten days' notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.

Sales elsewhere than in market, or in shops, etc., prohibited.

13. After the market place is opened for public use, every person other than a licensed hawker (*s*) who shall sell or expose for sale in any place within the prescribed limits (*t*), except in his own dwelling place or

(*r*) These clauses are incorporated by the P. H. A., 1875, s. 167, *ante*, p. 383.

(*s*) A licensed hawker is within this exemption, although he is selling goods for which a hawker's licence is not required (*Llandudno U. D. C.* v. *Hughes*, [1900] 1 Q. B. 472; 64 J. P. 357). A licensed pedlar who sold potatoes and fruit outside the market, but within the limits, was held to be protected by the provisions, though he had a horse and waggon, and was thus acting rather as a hawker than as a pedlar (*Howard* v. *Lupton* (1875), L. R. 10 Q. B. 598; 40 J. P. 7). But that case was disapproved of, and the contrary held, subsequently to the passing of 44 & 45 Vict. c. 45 in the meantime, in *Woolwich L. B.* v. *Gardiner*, [1895] 2 Q. B. 497; 59 J. P. 597. See as to hawkers' licences, the Hawkers Act, 1888; *O'Dea* v. *Crowhurst* (1899), 68 L. J. Q. B. 655; 63 J. P. 424; *Holland* v. *Hall* (1902), 66 J. P. 424; 86 L. T. (N.S.) 355; *Philpott* v. *Allright* (1906), 70 J. P. 287; 94 L. T. (N.S.) 540; see also the Pedlars Acts, 34 & 35 Vict. c. 96, s. 6, and 44 & 45 Vict. c. 45.

The provision in the Hawkers Act, 1888, that it shall not be necessary for a licence to be taken out by any person selling fruit, victuals, or coal, relates only to the Excise licence under that Act, and was held not to enable a person to hawk fish in a town subject to a local Act, which contained a provision similar to that in the text, and a further provision enabling the corporation to grant licences for the sale of marketable commodities in the street (*Openshaw* v. *Oakley* (1889), 53 J. P. 740; 60 L. T. (N.S.) 929). Under a similar clause, in a local Act, it was held that a pedlar, who had a pedlar's licence, did not require to have a licence from the corporation to sell hat-guards in the street, as these were not tollable articles (*Loftos* v. *Gleave* (1891), 55 J. P. 149). So also where fish were exempt from toll under another Act, a corporation licence was held not to be necessary (*Loftos* v. *Kiggins* (1891), 55 J. P. 151).

(*t*) As to the *prescribed limits*, see the P. H. A., 1875, s. 316, *ante*, p. 649. In *Caswell* v. *Cook*, *post*, p. 1387, the term was held to mean the limits to which the local Act applied, in that case to the boundaries of the borough. A farmer residing at B., ten miles from T., a district under the P. H. A., contracted at B., with a butcher living in T., to sell some pigs to him, which were to be killed at B., and delivered at T. It was held that no offence was committed within this section (*Bourne* v. *Lowndes* (1858), 22 J. P. 354; 31 L. T. (O.S.) 114). A sale is not within the section unless the bulk of the goods sold is, at the time of such sale, substantially within the prescribed limits (*Newtownards Town Commissioners* v. *Woods* (1877), Ir. R. 11 C. L. 506). But a sale by sample, the bulk being within the

shop (*u*), any articles in respect of which tolls are by the special Act authorised to be taken in the market (*x*), shall for every such offence be liable to a penalty not exceeding forty shillings (*y*).

limits, is within the section (*Londonderry Corporation* v. *McElhinney* (1874), Ir. R. 9 C. L. 71). As to a sale in a part of a town not in existence at the time of the passing of a local Act, see *Collier* v. *Worth* (1876), 1 Ex. D. 464; 40 J. P. 342; *Killmister* v. *Fitton* (1886), 53 L. T. (N.S.) 959. H. delivered certain carcases at a door within the limits, and the carcases were then weighed and paid for, but it was alleged that they were delivered in pursuance of a previous contract entered into between the same parties at the same place a week previously. It was held that the sale was within the section (*Exeter Corporation* v. *Heaman* (1877), 42 J. P. 503; 37 L. T. (N.S.) 534). And where a greengrocer, within the limits, used to order vegetables from B., a farmer outside, and paid for them monthly, it was held that B. was liable to be convicted of selling in a place within the limits other than his own shop (*Torquay Market Co.* v. *Burridge* (1883), 48 J. P. 71). These cases may be distinguished from *Bourne* v. *Lowndes*, *ante*, p. 1385, on the ground that there the sale was made beyond the limits; but they cannot be reconciled with *Stretch* v. *White* (1861), 25 J. P. 485, where a farmer living without the limits was held not to offend by sending all his butter from time to time to a shop within the limits, and being allowed the market price for it. As to *Stretch* v. *White*, the observations of the judges in *Pletts* v. *Campbell*, [1895] 2 Q. B. 229; 59 J. P. 502, may be referred to, though the former decision was followed in *Newtownards U. D. C.* v. *Tweedie* (1907), 41 Ir. L. T. 23. And see *Quilligan* v. *Limerick Market Trustees* (1883), 14 L. R. Ir. 265; *Lisburn U. D. C.* v. *Shortt* (1912), 46 Ir. L. T. 132. The T. Market Act prohibited the sale within certain limits of corn, grain, fish, meat, poultry, or other provisions, or any bulls, sheep, swine, or other live cattle which was usually sold in public markets. It was held that a shopkeeper selling potatoes came within the statute, these being "provisions," and also "usually sold within markets" (*Shepherd* v. *Folland* (1884), 49 J. P. 165). A cattle salesman was convicted under this section for selling cattle in a yard which he held under lease from the urban authority, containing covenant for quiet enjoyment, the urban authority having established their market after the date of the leases (*Spurling* v. *Bantoft*, [1891] 2 Q. B. 384; 56 J. P. 132). G. was charged on a summons with having sold and exposed for sale on June 13th, 1904, within the limits of a market, a quantity of potatoes which were tollable articles. It appeared that on June 9th, G. had agreed with M., within the limits of the market, to supply him with one hundredweight of potatoes, no price being agreed on. The potatoes were not at the time within the limits of the market, but were delivered within such limits on June 13th :—*Held*, that G. was not guilty of any offence against this section (*Gracey* v. *Banbridge U. D. C.*, [1905] 2 I. R. 209).

A local Act imposed tolls on waggons and carts used for the exposure of goods on any market day. A baker, who was not a licensed hawker, had a customer within the limits of the market, whom he supplied with bread three times a week. It was held that he could not be convicted of exposing bread for sale so as to be within the above section (*White* v. *Yeovil Corporation* (1892), 61 L. J. M. C. 213). Under a similar local Act the use of a cart for the delivery of mineral waters from a distant manufactory to customers within the limits was held not to be a using for exposing for sale (*Newton-in-Makerfield U. D. C.* v. *Lyon* (1900), 69 L. J. Q. B. 230; 81 L. T. (N.S.) 756). Where a right to take tolls was imposed by a local Act, it was held that no right to sell without paying toll could be acquired by non-payment of tolls for a considerable period, and such selling might be restrained by injunction (*Woolwich Corporation* v. *Gibson* (1905), 69 J. P. 361; 92 L. T. (N.S.) 538). In construing this section the niceties of the law relating to the sale of goods must be disregarded. It applies to an agreement which would be popularly called a sale (*Lambert* v. *Rowe*, [1914] 1 K. B. 38; 78 J. P. 20).

(*u*) A vessel moored to a wharf on a canal within the limits is not a shop (*Wiltshire* v. *Baker* (1861), 11 C. B. (N.S.) 237). In order to be within the exemption, the shop need not be attached to a dwelling-house; but a sale by auction in a shop attached to and being part of a dwelling-house is privileged (*Wiltshire* v. *Willett* (1861), 26 J. P. 312; 11 C. B. (N.S.) 240). A structure which resembled a booth or stall, having no stable or substantial character, no room for customers within it, nor means of sheltering or protecting goods from the weather or from depredators, was held not to be a shop (*Pope* v. *Whalley* (1865), 29 J. P. 134; 6 B. & S. 303). But the business carried on wholesale in the ground floor of a building, the other floors of which are used for warehouse and storage business, is carried on in a shop (*Haynes* v. *Ford*, [1911] 2 Ch. 237; 75 J. P. 401). A sale by auction of horses in a yard attached to a dwelling-house is not a sale in a shop (*Llandaff and Canton Market Co.* v. *Lyndon* (1860), 25 J. P. 295; 8 C. B. (N.S.) 515). A piece of ground outside a dwelling-house, which had been used for many years as the site of a wooden shed in which articles had been sold, was held to be an accessory to the shop, and within this exception (*Ashworth* v. *Heyworth* (1869), L. R. 4 Q. B. 316; 33 J. P. 565). An agricultural

(*x*), (*y*) For note (*x*) see p. 1387; for note (*y*) see p. 1338.

14. After the market place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if — Market days.

hall with land containing pens and sheds for the sale of cattle and sheep by auction, though adjoining the auctioneer's dwelling-place, was held not to be a shop (*Fearon* v. *Mitchell* (1872), L. R. 7 Q. B. 690; 36 J. P. 804; *McHole* v. *Davies* (1876), 1 Q. B. D. 59; 40 J. P. 548). A sale in a skittle ground let for two days for the occasion was held not to be a sale in a shop (*Hooper* v. *Kenshole* (1877), 2 Q. B. D. 127; 41 J. P. 142; and see also *Perkins* v. *Arber* (1873), 37 J. P. 406). A sale of marketable commodities from carts and vans standing in the street opposite a shop is not a sale in the shop (*Horner* v. *Freeman*, W. N. (1884), p. 223). A room on the first floor of a building in the City of London where goods are regularly put up for auction is not a shop—so held by SCRUTTON, J., in *Clayton* v. *Le Roy*, [1911] 2 K. B. 1031; 75 J. P. 229. This point was not questioned in the Court of Appeal, see [1911] 2 K. B. 1046; 75 J. P. 521.

Commissioners were, by a local Act incorporating this Act, empowered to set up a market and take toll. Section 47 of the local Act imposed tolls upon all persons selling marketable commodities, except on premises in their own occupation. An auctioneer held sales in a field in his own occupation, and it was held that he was not liable for penalties (*Rutherford* v. *Straker* (1889), 42 Ch. D. 85 n.). It was further held that he could not be sued for disturbance of the market (*Abergavenny Improvement Commissioners* v. *Straker* (1889), 42 Ch. D. 83).

There may be a right by immemorial enjoyment or prescription to exclude persons from selling marketable articles in shops on market days. See *Mosely* v. *Walker* (1827), 7 B. & C. 40; 5 L. J. K. B. 358; *Macclesfield Corporation* v. *Pedley* (1833), 4 B. & Ad. 397; 1 Nev. & M. 708; *Shepherd* v. *Folland*, *ante*, p. 1386; but the grant of a market with all liberties and free customs to such market belonging, does not imply such a right (*Macclesfield Corporation* v. *Chapman* (1844), 12 M. & W. 18; 13 L. J. Ex. 32; *Penryn Corporation* v. *Best* (1878), 3 Ex. D. 292; 42 J. P. 629). A local Act stated that for preventing encroachments on the markets, any person who shall sell, among other things, roots, fruit, or garden stuff in any other places within the town than in the market should be liable to a penalty. A. bought vegetables from a dealer in the market, and then offered them for sale in the streets of the town:—*Held*, that he had incurred the penalty (*Black* v. *Sackett* (1870), 10 B. & S. 639).

By a local Act it was necessary to obtain a licence to sell (*inter alia*) mutton. The defendant, who had no licence to sell mutton, had some mutton on his premises for storage purposes only. His wife, contrary to his express instructions, sold some mutton. It was held that the wife had exceeded her general authority, and that the defendant was not liable (*Wake* v. *Dyer* (1911), 75 J. P. 210; 104 L. T. 74).

As to what amounts to disturbance of a market, see *Prince* v. *Lewis* (1826), 5 B. & C. 363; 4 L. J. K. B. 188; *In re Islington Market Bill* (1835), 3 C. & F. 513; *Holcroft* v. *Heel* (1799), 1 B. & P. 400; *Mosley* v. *Chadwick* (1782), 7 B. & C. 47 n.; 3 Doug. 117; *De Rutzen* v. *Lloyd* (1836), 5 A. & E. 456; 6 Nev. & M. 776; *Brecon Corporation* v. *Edwards* (1862), 26 J. P. 614; 1 H. & C. 51; *Dorchester Corporation* v. *Ensor* (1869), L. R. 4 Ex. 335; 34 J. P. 167; *London Corporation* v. *Low* (1880), 49 L. J. Q. B. 144; 44 J. P. 169; *Elwes* v. *Payne* (1879), 12 Ch. D. 468; *Manchester Corporation* v. *Lyons* (1882), 22 Ch. D. 287; 47 L. T. (N.S.) 677; *G. E. Rail. Co.* v. *Goldsmid* (1884), 9 App. Cas. 927; 49 J. P. 260; *Wilcox* v. *Steel*, [1904] 1 Ch. 212; 68 J. P. 146. See also the cases cited in the notes to s. 166 of the P. H. A., 1875, *ante*, p. 375, and *Stevens* v. *Chown*, [1901] 1 Ch. 894.

(*x*) Where a local Act imposed a toll upon the shops or stalls in the market, and not on the commodities sold there, it was held that a person who sold fruit and fish, which were marketable commodities, from door to door within the prescribed limits was not liable under this section (*Caswell* v. *Cook* (1863), 27 J. P. 183; 11 C. B. (N.S.) 637). A horse is an article within this section (*Llandaff and Canton Market Co.* v. *Lyndon*, *ante*, p. 1386). And see *Shepherd* v. *Folland*, *ibid.*

A market Act provided that no person should sell or expose for sale in a certain district, except in the market place, any provisions or other goods mentioned in the schedule. The schedule, among other things, contained this item: "For every stallion exposed to view, one shilling." It was held that the Act did not so incorporate the words of the schedule as to make it an offence to expose to view a stallion within the district, for it applied only to exposing for sale (*Luke* v. *Charles* (1861), 25 J. P. 148). An Act authorised a corporation to take a toll "for every cartload of hay, straw, grass, vetches or other article, commodity or thing exposed for public sale." It was held that coal was not included in the general words "other article, commodity or thing" (*Johnson* v. *Atkinson* (1909), 73 J. P. 510; 101 L. T. 637). A toll was imposed "for every cart containing milk, fish, or other goods, provisions, marketable commodities or articles" brought to the market for sale or exposure for sale. The respondent sold milk from a cart within the prescribed limits of the borough, but not in the authorised market, and was summoned under this section (which was incorporated in the local Act) for unlawfully selling milk within the prescribed limit. It was held that the toll was a toll on every cart containing milk and

any), and on such other days as the undertakers shall appoint from time to time by any byelaw to be made in pursuance of this or the special Act (*z*).

Penalty for selling or exposing for sale unwholesome meat, &c.

15. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding five pounds for every such offence; and any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice; and every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding five pounds for every such offence (*a*).

Penalty for obstructing market or fair keeper.

16. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding forty shillings.

Slaughter-houses.

And with respect to slaughter-houses, be it enacted as follows:

* * * * *

Inspection of slaughter-houses.

20. The inspector of provisions, or any officer appointed by the undertakers for that purpose, may at all times of the day, with or without assistants, enter into and inspect all buildings erected or set apart by the undertakers for slaughtering cattle, and examine whether any cattle or the carcase of any cattle is deposited there; and in case such officer shall find any cattle, or the carcase or part of the carcase of any such cattle, which shall appear unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case upon such inspection and examination such cattle, carcase, or part of a carcase shall be found unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and every person who shall obstruct or

not on the sale of milk, and that the respondent could not be convicted (*Jenkins* v. *Thomas* (1911), 75 J. P. 87; 104 L. T. 74).

It is to be observed that the section does not enable a person to sell elsewhere than in the market or in a shop on payment of the tolls. Sometimes in local Acts, however, there is provision for selling in the streets, etc., upon obtaining a licence or on paying the prescribed tolls. See *Carter* v. *Parkhouse* (1870), 34 J. P. 438; 22 L. T. (N.S.) 788.

As to what are marketable commodities within the provisions of a local Act, see *Morgan* v. *Kingdon* (1875), 39 J. P. 471; *Johnson* v. *Atkinson, supra.*

(*y*) An association of retail dealers, many of whom dealt in tollable articles in a place in which this Act was applicable under s. 167 of the P. H. A., 1875, was held entitled by their servant to take proceedings as a party aggrieved within the meaning of s. 253 of that Act, for the recovery of penalties for selling tollable articles in that place contrary to the text (*Ross* v. *Taylerson* (1898), 62 J. P. 181).

(*z*) See s. 42, *post*, p. 1392. It is doubtful whether 27 Hen. 6, c. 5, as amended by 13 & 14 Vict. c. 23, is applicable to prevent the holding of markets belonging to a local authority on Sundays, feast days, etc. Section 1 of the Sunday Observance Act, 1677, prohibits the exposure for sale of any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's Day, under pain of forfeiture of the wares, etc. The owner of a market may remove not only the whole, but a part of it, from one place to another within the compass of his district (*Wortley* v. *Nottingham L. B.* (1870), 21 L. T. (N.S.) 582). And see *Edinburgh Magistrates* v. *Blackie* (1886), 11 App. Cas. 665.

A byelaw that no auctioneer should sell cattle by auction in the market before twelve o'clock on the market day was held to be valid (*Collins* v. *Wells Corporation* (1884), 1 T. L. R. 328).

(*a*) See the provisions of the P. H. A., 1875, ss. 116—119, *ante*, pp. 215—223, as to unsound meat, etc. See also s. 20, *post*, as to cattle, etc., seized in a slaughter-house, and ss. 125—131 of 10 & 11 Vict. c. 34, *post*, pp. 1435—1438.

hinder such inspector or other officer in the discharge of any of the duties aforesaid shall be liable to a penalty not exceeding five pounds for every such offence (*b*).

And with respect to weighing goods and carts, be it enacted as follows (*c*): *Weighing of goods and carts.*

21. The undertakers shall provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and measures, according to the standard weights and measures for the time being, for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden (*d*). Weights and measures for weighing commodities sold at markets and fairs.

22. Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid shall be liable to a penalty not exceeding forty shillings. Articles to be weighed if requested by the buyer.

23. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required shall be liable to a penalty not exceeding forty shillings (*d*). Penalty for refusal to weigh.

24. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts with or without their loading, as may be required. Machines for weighing carts, etc.

25. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing machines, and shall permit the same to be weighed; and if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be reweighed without such load; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half mile, and a like sum for every additional half mile; and such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed. Weighing of carts with their loads, and after discharge.

(*b*) This section is not incorporated in the P. H. A., 1875, but is inserted as being referred to in s. 15, *supra*.

(*c*) Incorporated by the P. H. A., 1875, s. 167, *ante*, p. 383. As to the purchase, adjusting, and testing of these weighing machines, see 22 & 23 Vict. c. 56, ss. 6—8, 12, re-enacted by the Weights and Measures Act, 1878, Sched. VI., Part 2, the Revenue Act, 1889, s. 29, the Weights and Measures Act, 1889, the Weights and Measures Act, 1904, and the cases of *Hayley* v. *Taylor* (1900), 82 L. T. (N.S.) 803; *Lane* v. *Rendall*, [1899] 2 Q. B. 673; 63 J. P. 757; *London C. C.* v. *Payne*, [1904] 1 K. B. 194; 68 J. P. 21; *Anglo-American Oil Co.* v. *Manning*, [1908] 1 K. B. 536; 72 J. P. 35, as to false and unjust weights. As to the weighing of cattle, see 50 & 51 Vict. c. 27; 54 & 55 Vict. c. 70, *post*, pp. 1797, 1863.

(*d*) See also 41 & 42 Vict. c. 49, Sched. VI., Part 2, re-enacting 22 & 23 Vict. 56, ss. 6—8, 12.

Penalty on drivers for refusing to take carts to be weighed, &c.

26. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing machine as hereinbefore directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding twenty shillings.

Penalties on drivers committing frauds in weighing.

27. Every driver of any such cart weighed at any weighing machine to be provided in pursuance of this or the special Act who shall commit any of the following offences shall be liable to a penalty not exceeding five pounds for each offence ; (that is to say,)

If he at the time of weighing any such cart knowingly have anything in or about the same other than the proper loading thereof :

If he alter any ticket denoting the weight of any such cart, or the loading of the same :

If he make or use, or be privy to making or using, any ticket falsely stating the weight of any such cart or the loading thereof :

If he, after the weighing of any such cart with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket :

If he, between the time when the cart and the loading thereof have been so weighed, and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof :

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or the loading thereof.

Penalty on buyers or sellers for committing frauds in weighing.

28. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for frauds committed by the machine keeper.

29. The person for the time being appointed to keep any weighing machine provided in pursuance of this or the special Act shall be liable to a penalty not exceeding five pounds in any of the following cases ; (that is to say,)

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed :

If he do not fairly weigh every such cart, with or without loading, as the case may be :

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account specifying the true weight of such cart, with or without such loading, as may be required :

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof :

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof, to alter the true weight thereof respectively :

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

Penalty on other parties committing frauds as to weighing.

30. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof

in pursuance of this or the special Act, shall for every such offence be liable to a penalty not exceeding five pounds.

And with respect to the stallages, rents, and tolls to be taken by the undertakers, be it enacted as follows (*e*) : *Tolls.*

31. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive any stallage, rent, or toll until the market place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto (*f*). Tolls, etc. not to be demanded until market or fair completed.

32. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid ; and any such justices shall sign such certificate on proof being adduced to them that the market place or place for a fair or slaughter-house is so completed and fit for public use. Certificate of two justices to be evidence that market or fair is completed.

33. The several stallages, rents, or tolls payable in respect of the market or fair or slaughter-house shall be paid from time to time, on demand, to the undertakers, or the collector or other person authorised by the undertakers to receive the same. Tolls, etc. to be paid on demand to undertakers or collector.

34. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorised by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured. Tolls for weighing, etc. to be paid before goods, etc. are weighed, etc.

35. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect whereof they are demandable, are brought into the market place, and before the cattle are put into any pen, or tied up in such market place ; and if the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed. Tolls in respect of cattle brought to market for sale.

36. (*g*) The undertakers may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair, or for the slaughter-houses, or for weighing and measuring, provided that the stallages, rents, and tolls in no case exceed the amounts authorised by the special Act (*h*). Stallages, tolls, etc. may be varied from time to time.

(*e*) Incorporated with the P. H. A., 1875, by s. 167, *ante*, p. 383. No tolls are leviable by the authority unless, as regards such as were established between 1858 and 1872, they were approved of by the Secretary of State. As regards such as have been or shall be approved of by the L. G. B., see 21 & 22 Vict. c. 98, s. 50 ; 34 & 35 Vict. c. 70 ; and the P. H. A., 1875, s. 167, *ante*, p. 383. The tolls therein referred to are interpreted by the Board to be tolls on buying and selling. They have no power to approve of stallages, rents, or pickage tolls under the section last mentioned.

As to the return of tolls which must be made under the Local Taxation Returns Act, 1860, see the Act, *post*, p. 1481.

(*f*) Where the undertakers receive toll and invite persons to come to market with their cattle, a duty is imposed on them at common law to keep the market in a safe condition for the cattle as regards the construction of the market place (*Lax* v. *Darlington Corporation* (1880), 5 Ex. D. 28 ; 44 J. P. 312). The L. G. B. have stated that they are not aware of any provision in the general law enabling a district council to levy tolls upon cattle passing through the district.

(*g*) Sections 36—41 (both included) are applied to tolls for weighing cattle by s. 8 of the Markets and Fairs (Weighing of Cattle) Act, 1887, *post*, p. 1797.

(*h*) As to the construction of the Liverpool New Cattle Market Act, 1831, see *Att.-Gen.* v. *Liverpool New Cattle Market Co.*, W. N. (1896) 30 (2).

Penalty on taking a greater toll than authorised by this or the special Act.

37. Every person who shall demand or receive a greater toll than that authorised to be taken under the provisions of this or the special Act, shall for every such offence be liable to a penalty not exceeding forty shillings.

Recovery of tolls by distress, etc.

38. If any person liable to the payment of any stallage, rent, or toll authorised by this or the special Act to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorised by the undertakers or their lessee to collect the same, may levy the same in England . . . by distress . . . of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any court having competent jurisdiction (*i*).

Disputes respecting tolls, how to be settled.

39. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined in England . . . by a justice, . . . and such justice . . . shall, on application made to him, determine the same, and make such order therein, and award such costs to either party, as to him shall seem proper; and in default of payment, on demand, of the money which shall be so awarded, and of the costs, the same shall be forthwith levied in England . . . by distress, . . . and the justice . . . shall issue his warrant accordingly (*i*).

Penalty for obstructing collector of rents, etc.

40. Every person who shall assault or obstruct any person authorised to collect any stallage, rent, or toll authorised by this or the special Act, shall for every such offence be liable to a penalty not exceeding forty shillings.

List of tolls, etc. to be set up and placed in conspicuous places.

41. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing-house and slaughter-house provided by the undertakers, to which each such list shall relate, and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: Provided always, that if such list shall be destroyed, injured, or obliterated, the stallages, rents, and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act.

Byelaws.

And with respect to the byelaws to be made by the undertakers, be it enacted as follows (*k*):

Byelaws may be made for all or any of the purposes herein named.

42. The undertakers may from time to time make such byelaws as they think fit for all or any of the following purposes; (that is to say,)

For regulating the use of the market place and fair, and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

(*i*) Words relating to Ireland and Scotland are omitted from this section.

(*k*) Under s. 167 of the P. H. A., 1875, *ante*, p. 383, an authority may make byelaws for any of the purposes mentioned in the above section. These byelaws will be made under the P. H. A., and the remaining sections of this Act as to byelaws need not therefore be referred to. Model byelaws under this section have been issued by the L. G. B. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 215.

A byelaw made by a local board prevented persons from throwing skins upon any part of the ground occupied by the market, or the immediate approaches, or in any cart standing thereon without being authorised so to do by the superintendent of the market. This was held to be too general, and therefore bad, as in restraint of trade (*Worthy* v. *Nottingham*

For fixing the days, and the hours during each day, on which the market or fair shall be held:

For inspection of the slaughter-houses (*l*), and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein:

For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act:

For regulating the use of the weighing machines provided by the undertakers, and for preventing the use of false or defective weights, scales, or measures:

For preventing the sale or exposure for sale of unwholesome provisions in the market or fair.

* * * * *

THE GASWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 15.) (*m*)

An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Gasworks for supplying Towns with Gas.

[23rd April 1847.]

[**1.**] This Act shall extend only to such gasworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith, and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act (*n*). Incorporation with special Act.

L. B. (1869), 33 J. P. 806; 21 L. T. (N.S.) 582). A byelaw that no auctioneer should sell cattle by auction in the market before 12 o'clock on the market day was held to be valid (*Collins* v. *Wells Corporation* (1885), 1 T. L. R. 328). A byelaw made under a local Act for regulating markets was held not to be unreasonable or in restraint of trade by reason of its setting apart a part of a market for sale by wholesale only, and providing a penalty for selling by retail in that part (*Strike* v. *Collins* (1886), 50 J. P. 741; 55 L. T. (N.S.) 182). A byelaw that sale rings established by the local authority shall be used only for public sales by auction on conditions equally applicable to all bidders and buyers, and not for private sales, or for sales to any limited number of persons, or for sales in which any class of the public are excluded from bidding or buying was held to be good in *Scott* v. *Glasgow Magistrates*, [1899] A. C. 470; 64 J. P. 132. See also Diseases of Animals Act, 1894, ss. 22 (ix.), (xx.) and 39.

As to the confirmation of byelaws made under this section, see 47 & 48 Vict. c. 12, *ante*, p. 720.

(*l*) *I.e.*, the slaughter-houses referred to in ss. 17 and 20 of this Act which are not incorporated. Urban authorities may make byelaws for the regulation of slaughter-houses under 10 & 11 Vict. c. 34, ss. 128—130, *post*, p. 1436, incorporated by the P. H. A., 1875, s. 169, *ante*, p. 388.

(*m*) The P. H. A., 1875, s. 161, *ante*, p. 362, enables an urban authority to obtain a Provisional Order authorising a gas undertaking under the Gas and Water Works Facilities Act, 1870, and any Act amending the same (36 & 37 Vict. c. 89). These Acts, which are set out, *post*, pp. 1497, 1574, incorporate this Act, and in consequence the amending Act of 1871, both of which are, therefore, included in this Appendix.

(*n*) As to the limits of supply, see *Gaslight and Coke Co.* v. *South Metropolitan Gas Co.* (1890), 54 J. P. 373; 62 L. T. (N.S.) 126, the facts of which are set out, *ante*, p. 363. A water company was authorised to give a supply of water within certain specified parishes, and extended its water main to the boundary of the district within which it was authorised to supply water, and from thence continued it at the cost of the consumer to a place beyond

Interpretation.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows :

"The special Act." **2.** The expression " the special Act " used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of gasworks, and with which this Act shall be so incorporated as aforesaid ; "Prescribed." and the word " prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word " prescribed " the expression " prescribed for that purpose in the special Act " had been used ; "The lands." and the expression " the lands " shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof : and "The undertaking." the expression " the undertaking " shall mean the gasworks, and the works connected therewith, by the special Act authorised to be constructed ; and "The undertakers." the expression " the undertakers " shall mean the persons by the special Act authorised to construct the gasworks.

Interpretations. **3.** The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

Number. Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number :

Gender. Words importing the masculine gender shall include females :

"Person." The word " person " shall include corporation, whether aggregate or sole :

"Lands." The word " lands " shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure :

"Street." The word " street " shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place, within the limits of the special Act (*o*) :

"The gasworks." The expression " the gasworks " shall mean the gasworks, and the works connected therewith, by the special Act authorised to be constructed (*p*) :

"Gas rate." The expression " gas rate " shall include any rent, reward, or payment to be made to the undertakers for a supply of gas :

"Month." The word " month " shall mean calendar month :

"Superior courts." The expression " superior courts," where the matter submitted to the cognizance of the superior courts arises in England . . . shall mean Her Majesty's superior courts of record at Westminster . . . (*q*).

"Oath." The word " oath " shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

its district. Then they erected a hydrant and meter from which pipes were laid to the consumer's house. It was held that a " supply " of water covered the delivery of water for use at the terminals, wherever they might be, at which a consumer took possession of the water and devoted it to his own use, and that the company was not entitled to give such supply and must be restrained by injunction (*Att.-Gen.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338 ; 73 J. P. 453).

(*o*) This definition was held not to include an open tract of land above mean high water-mark, which belonged to the owner of enclosed land fronting the shore. It appeared that the inhabitants of two villages on the shore had always gone to and fro between them along the shore, and at high water passed over this land as they chose, but by no defined track (*Maddock* v. *Wallasey L. B.* (1886), 55 L. J. Q. B. 267 ; 50 J. P. 404).

(*p*) The expression " gasworks and plant " in s. 46 of the Hamilton Gas Works Act, 1895, was held to include not only the works themselves in the material sense, but the undertaking as a going concern (*Hamilton Gas Co.* v. *Hamilton Corporation*, [1910] A. C. 300; 74 J. P. 185; *Perth Gas Co.* v. *Perth City Corporation*, [1911] A. C. 506; 27 T. L. R. 526).

(*q*) Words relating to Scotland and Ireland only are here omitted.

The word "county" shall include riding or other division of a county having a separate commission of the peace . . . (r) and it shall also include county of a city or county of a town: "County."

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together (r): "Justice." "Two justices."

. . . . .

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the gasworks, or the principal office thereof, for the county or place in which the gasworks are situate, or for some division of such county having a separate commission of the peace. "Quarter sessions."

And with respect to citing this Act, or any part thereof, be it enacted as follows: *Citing the Act.*

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Gasworks Clauses Act, 1847." Short title of this Act.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act; and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates. Incorporation of parts of this Act with other Acts.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows (s): *Laying of pipes.*

6. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels (t) within or under such streets and bridges, and lay down and place within the same limits, pipes, conduits, service pipes, and other works (u), and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges, and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the undertakers shall from time Power to break up streets, etc. under superintendence, and to open drains, and to lay pipes make sewers, erect lamps, etc.

(r) Words relating to Scotland and Ireland only are here omitted.

(s) See on this subject the cases cited in the notes to the P. H. A., 1875, s. 149, *ante*, p. 269. As to the liability of the company for an accident caused while breaking up a pavement, see *Hornby* v. *Liverpool United Gas Co.* (1883), 47 J. P. 231. As to what is a street, see *Maddock* v. *Wallasey L. B.*, *ante*, p. 1394.

(t) A tunnel, with brick sides and a roof of girders set in concrete, which is constructed by the owner of the soil on either side of a public highway, is not a tunnel within the meaning of the section with which the undertakers may interfere (*Schweder* v. *Worthing Gas Light and Coke Co.* (No. 1), [1912] 1 Ch. 83; 76 J. P. 3).

(u) A corporation, empowered to supply gas within a township, of which the local board, as undertakers within the meaning of this section, had the exclusive right of laying gas mains therein and was compelled to repair them and to allow the corporation to use them, was held to have a mere easement in the mains and not liable to be rated in respect of them (*Southport Corporation* v. *Ormskirk Assessment Committee*, [1894] 1 Q. B. 196; 58 J. P. 212). As to the meaning, in a local Act, of the term "mains," see *Whittington Gas Light and Coke Co.* v. *Chesterfield Gas and Water Board*, [1914] 1 Ch. 270; 78 J. P. 113.

to time deem necessary for supplying gas to the inhabitants of the district included within the said limits, doing as little damage as may be (*v*) in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers (*x*).

Undertakers not to enter on private land without consent.

7. Provided always, that nothing herein shall authorise or empower the undertakers to lay down or place any pipe or other works into, through, or against any building (*y*), or in any land, not dedicated to public use (*z*), without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down (*a*).

Notice to be served on persons having control, etc. before breaking up streets or opening drains.

8. Before the undertakers proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons (*b*) under whose control or management the same may be, or to their clerk, surveyor, or other officer notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen (*c*).

(*v*) As to this phrase, see *R.* v. *East and West India Docks* (1853), 2 El. & Bl. 466; 22 L. J. Q. B. 380.

(*x*) As to the assessment of compensation, see 64 J. P. 291.

(*y*) Arches in a roadway occupied as cellars are buildings (*Thompson* v. *Sunderland Gas Co.* (1876), 2 Ex. D. 429; 42 J. P. 198). So is a brick tunnel with a roof constructed of girders set in concrete (*Schweder* v. *Worthing Gas Light and Coke Co.* (No. 1), *ante*, p. 1395, following *Caledonian Rail. Co.* v. *Glasgow Corporation* (1901), 3 F. 526).

(*z*) The dedication of a road to public use brings it within s. 6 (*supra*), and no part of it can for the purposes of gas or water undertakings be properly held to be land "not dedicated to public use" under this section. Dedication as between the owner of the soil on the one hand and the controlling authority on the other, involves not merely the occupation by the public of the surface, but also the dedication of so much of the subjacent soil as is necessary for the proper maintenance of the surface as a road or street (*Schweder* v. *Worthing Gas Light and Coke Co.* (No. 2), [1913] 1 Ch. 118; 77 J. P. 41). As to breaking up occupation roads not dedicated to the public, see *Selby* v. *Crystal Palace District Gas Co.* (1861), 30 Beav. 606; 31 L. J. Ch. 592.

(*a*) This section does not preclude the undertakers from taking a pipe through a railway bridge under s. 6 without cutting into the structure of the bridge but laying the pipe in the soil (*Taff Vale Rail. Co.* v. *Cardiff Gaslight and Coke Co.* (1907), 71 J. P. 350; 23 T. L. R. 528).

In view of this section the undertakers are not liable to penalties under s. 36 of the Gasworks Clauses Act, 1871, *post*, p. 1545, for neglect or refusal to supply gas to a lamp in a private passage where the owner objects to their laying the pipe (*Bellamy* v. *Liverpool United Gas Co.* (1904), 68 J. P. 540; 2 L. G. R. 1182).

(*b*) A rural district council is not a "person under whose control or management" a highway, dedicated to the public, but not repairable by the inhabitants at large, is within the meaning of this section (*Redhill Gas Co.* v. *Reigate R. D. C.*, [1911] 2 K. B. 565; 75 J. P. 358). Within the area of an urban district council there were three streets or roads which were open for public use, but which were not repairable by the inhabitants at large. The Post Office authorities were desirous of placing telegraph wires along these streets, and applied to the district council for their consent, but the council refused to give consent on the ground that the streets were not under their control within the meaning of s. 13 of the Telegraph Act. It was held that the council "had not the control over the roads" and were not therefore entitled to give consent (*Postmaster-General* v. *Hendon U. D. C.*, [1914] 1 K. B. 564; 78 J. P. 145).

(*c*) Consent is not necessary (*Dover Gaslight Co.* v. *Dover Corporation* (1857), 7 De G. M. & G. 545; 1 Jur. (N.S.) 812). As to what notice must be given, see *Edgware Highway Board* v. *Colne Valley Rail. Co.* (1877), 46 L. J. Ch. 889. As to the right of support of pipes laid in a highway, see *Normanton Gas Co.* v. *Pope* (1883), 52 L. J. Q. B. 629; 49 L. T. (N.S.) 748.

9. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the undertakers' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer (*d*).

Streets or drains not to be broken up except under superintendence of persons having control of the same.

10. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement, where the same shall be open or broken up, every night during which the same shall be continued open or broken up, and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Streets, etc. broken up to be reinstated without delay.

Roads, etc. to be fenced and lighted while opened;

and to be kept in repair for a certain time afterwards.

11. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required, except in the cases in which the undertakers are hereby authorised to perform such works without any superintendence or notice, or if the undertakers make any delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid,

Penalty for delay in reinstating streets, etc.

(*d*) See *Edgware Highway Board* v. *Colne Valley Water Co.* (1877), 46 L. J. Ch. 889; *East Molesey L. B.* v. *Lambeth Waterworks Co.*, [1892] 3 Ch. 289; and note (*g*) at p. 1398, *post.*

Where a local authority in the metropolis employ a contractor to reinstate streets broken up by a company under statutory powers, they cannot recover from the company under s. 114 of the Metropolis Management Act, 1855, any sum in addition to the amount actually paid to the contractor, in respect of supervision exercised by their officers over the work, if in fact no expense has been incurred for supervision beyond that which would have been incurred if the company had executed the work of reinstatement (*Metropolitan Water Board* v. *Westminster City Council* (1906), 75 L. J. K. B. 384; 70 J. P. 52).

they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made, a sum not exceeding five pounds for every such offence, and they shall forfeit an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof (*f*).

In case of delay, persons having control of streets, etc. may reinstate them.

12. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed, and the expense (*g*) of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same manner as damages are recoverable under this or the special Act.

Supply of gas.

And with respect to the supply of gas, and the recovery of the rent to be paid for the same, be it enacted as follows:

Power of the undertakers to contract for lighting buildings, streets, etc.

13. The undertakers may from time to time enter into any contract with any person for lighting or supplying with gas any public or private building, or for providing any person with pipes, burners, meters, and lamps, and for the repair thereof; and may also from time to time enter into any contract with the commissioners, trustees, or other persons having the control of the streets within the limits of the special Act for lighting the same or any of them with gas, and for providing such commissioners, trustees, or persons with lamps, lamp-posts, burners, and pipes for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the undertakers and the said commissioners, trustees, or other persons (*h*).

* * * * *

If rent is not paid, gas may be cut off and rent and expenses recovered.

16. If any person supplied with gas by virtue of this or the special Act, neglect to pay the rent due for the same to the undertakers, the undertakers may stop the gas from entering the premises of such person, by cutting off the service-pipe, or by such means as the undertakers shall think fit (*i*).

* * * * *

(*f*) Notwithstanding this section the undertakers may be liable in damages to a person injured in consequence of careless or defective filling in of the ground (*Goodson* v. *Sunbury Gas Co.* (1896), 60 J. P. 585; 75 L. T. (N.S.) 251). In the metropolis the local authority may claim to reinstate the street under s. 114 of the Metropolis Management Act, 1855, instead of permitting a gas company to do it, and in that case the gas company are not liable if it is done negligently (*Cressy* v. *South Metropolitan Gas Co.* (1906), 70 J. P. 405; 94 L. T. (N.S.) 790). Recovery of expenses of reinstatement from the gas company in such cases is provided for by s. 82 of the Metropolis Management Amendment Act, 1862. See *Commercial Gas Co.* v. *Poplar Borough Council* (1907), 70 J. P. 178; 94 L. T. (N.S.) 222.

(*g*) This includes a reasonable charge for the supervision of the work (*New River Co.* v. *Westminster Corporation* (1904), 68 J. P. 358).

(*h*) See the P. H. A., 1875, s. 161, *ante*, p. 362. Sections 14 and 15 of this Act are repealed by the S. L. R. A., 1875, except in so far as incorporated with the special Acts to which 34 & 35 Vict. c. 41, does not apply. Section 14 related to the exemption of gas fittings from distress, as to which see *Gaslight and Coke Co.* v. *Hardy* (1886), 17 Q. B. D. 619; 51 J. P. 6.

(*i*) The remainder of this section was repealed by the S. L. R. A., 1875, as also was s. 17, except in so far as incorporated with special Acts to which 34 & 35 Vict. c. 41, does not apply. The liability under this section attaches to the person, not to the premises, and the undertakers may cut off the gas supplied to one set of premises of a customer for default made by him in respect of another set of premises (*Montreal Gas Co.* v. *Cadieux*, [1899] A. C. 589).

The payment due to a gas company for gas supplied, though called a rent, is not really a rent, and consequently a gas company does not come within the words " or other person

Undue use of gas.

And with respect to waste or misuse of the gas, or injury to the pipes and other works, be it enacted as follows:

Penalty for fraudulently using the gas of the undertakers.

18. Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the undertakers without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the undertakers is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the undertakers, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or who shall otherwise improperly use or burn such gas (*k*), or shall supply any other person with any part of the gas supplied to him by the undertakers, shall forfeit to the undertakers the sum of five pounds for every such offence, and also the sum of forty shillings for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the undertakers may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into (*l*).

Penalty for wilfully removing or damaging pipes, etc.

19. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the undertakers, shall for each such offence forfeit to the undertakers any sum not exceeding five pounds, in addition to the amount of the damage done.

Satisfaction for accidentally damaging pipes, etc.

20. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay such sum of money by way of satisfaction to the undertakers for the damage done, not exceeding five pounds, as any two justices or the sheriff shall think reasonable (*m*).

to whom any rent is due" in s. 34 of the Bankruptcy Act, 1869 (*Ex parte Harrison, Re Peake* (1883), 13 Q. B. D. 753).

An incoming tenant is not liable for arrears due from an outgoing tenant under the Gaslight and Coke Company's special Act (*Cannon Brewery Co.* v. *Gaslight and Coke Co.*, [1904] A. C. 331; 68 J. P. 461).

(*k*) *I.e.*, in respect of gas supplied otherwise than by meter (*Falkirk Corporation* v. *Russell*, [1911] S. C. (J.) 99).

(*l*) As to larceny of gas, see *R.* v. *White* (1853), 3 C. & K. 363; *R.* v. *Foster* (1865), L. R. 1 C. C. R. 172. As to the operation of the Statute of Limitations, when there has been a fraudulent concealment of an improper using of gas within this section, see *Imperial Gaslight and Coke Co.* v. *London Gaslight Co.* (1854), 10 Ex. 39. The appellants, on their own premises, substituted for part of a gas pipe belonging to the respondents a larger pipe, in order to increase their supply, without having first obtained the respondents' consent, though notice under 34 & 35 Vict. c. 41, s. 15, *post*, p. 1541, to disconnect the pipe from the meter was duly given. There was no proof of any fraud, waste, or misuse of the gas. It was held that the appellants had committed an offence under the above section (*Morrison, Wood & Co.* v. *West Ham Gas Co.* (1885), 49 J. P. 662; 52 L. T. (N.S.) 817).

(*m*) Under this section a person may be made responsible although the lamp is placed by the local authority in an unsafe or improper position and is broken by such person without any negligence on his part (*Burgess* v. *Morris* (1897), 61 J. P. 553). But a master is not liable for damages to a lamp caused accidentally by his servant (*Harding* v. *Barker* (1889), 53 J. P. 308; 37 W. R. 78). He is, however, liable to an action at common law for damages caused by the negligence of his servant (*Crystal Palace Gas Co.* v. *Idris & Co.* (1900), 64 J. P. 452). If the summons charge damage as done unlawfully and carelessly it need not say "carelessly or accidentally," and a conviction will be good if there be evidence of carelessness, though short of what might be called negligence (*Ashton* v. *Eccles Corporation* (1907), 71 J. P. 55). See also *Gibbons* v. *Vanguard Motor Bus Co.* (1908), 72 J. P. 505; 25 T. L. R. 13; *Barnes U. D. C.* v. *London General Omnibus Co.* (1909), 73 J. P. 68; 100 L. T. 115; *Isaac Walton & Co.* v. *Vanguard Motor Bus Co.* (1909), 72 J. P. 505; 25 T. L. R. 13.

Nuisance from gas.

And with respect to the provision for guarding against fouling water, or other nuisance from the gas, be it enacted as follows (*n*) :

Penalty on undertakers allowing washings, etc. produced in making gas to flow into streams, reservoirs, etc.

21. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in superior court within six months.

22. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such wasting or other substance shall be conveyed or shall flow, or whose water shall be fouled, by any such act as aforesaid ; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased (*o*).

Daily penalty during the continuance of the offence.

23. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

Daily penalty during escape of gas after notice.

24. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping ; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice (*p*).

Penalty for fouling water by gas.

25. Whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Power to open ground and examine gas pipes to ascertain whether water is fouled by gas.

26. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers, the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the undertakers ; provided that such person, before proceeding so to

(*n*) See also the provisions of the P. H. A., 1875, s. 68, *ante*, p. 143, and the notes thereon ; the Waterworks Clauses Act, 1847, ss. 61—67, *post*, pp. 1420—1421 ; and the Rivers Pollution Prevention Act, 1876, *post*, p. 1645. As to the liability of a gas company for damage caused by an escape of gas, see *Jones* v. *Carshalton Gas Co.* (1888), 5 T. L. R. 69 ; *Burrows* v. *March Gas and Coke Co.*, *infra*.

(*o*) As to the effect of this section on a local Act, see *Parry* v. *Croydon Commercial Gas Co.* (1864), 28 J. P. 86 ; 15 C. B. (N.S.) 568.

(*p*) See *Mose* v. *Hastings and St. Leonards Gas Co.* (1864), 4 F. & F. 324 ; *Burrows* v. *March Gas and Coke Co.* (1872), L. R. 7 Ex. 96 ; 36 J. P. 517 ; *Price* v. *South Metropolitan Gas Co.* (1896), 65 L. J. Q. B. 126. As to a nuisance arising from gasworks, see *Wood* v. *Conway Corporation* (1914), 78 J. P. N. 171.

dig and examine, shall give twenty-four hours notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes. Ground, etc. to be reinstated.

27. If upon any such examination it appear that such water has been fouled by any gas belonging to the undertakers, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination. Expenses to abide result of examination.

28. The amount of the expenses of every such examination and repair, and of any injury done to the undertakers, shall, in case of any dispute about the same, together with the cost of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered. How expenses shall be ascertained and recovered.

29. Nothing in this or the special Act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas (*q*). Nothing to exempt undertakers from being indicted for a nuisance.

Profits of the undertakers.

And with respect to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit, be it enacted as follows:

30. The profits of the undertaking to be divided amongst the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate (*r*). Profits of the undertakers limited.

(*q*) See section 9 of the Gasworks Clauses Act, 1871, *post*, p. 1539, and *Jordeson* v. *Sutton Sculcoats and Drypool Gas Co.*, [1899] 2 Ch. 217; 63 J. P. 692; *Batcheller* v. *Tunbridge Wells Gas Co.* (1901), 65 J. P. 680; 84 L. T. (N.S.) 765. A company cannot justify a nuisance by setting up incapacity to make or supply gas without so doing (*Att.-Gen.* v. *Gaslight and Coke Co.* (1878), 7 Ch. D. 217). But compare with this the decision in *Harrison* v. *Southwark and Vauxhall Waterworks Co.*, [1891] 2 Ch. 409, where it was held that a statutory authority to sink a shaft included all things reasonably necessary, though causing a temporary nuisance. This case was distinguished in *Knight* v. *Isle of Wight Electric Light and Power Co., Ltd.* (1904), 73 L. J. Ch. 299; 68 J. P. 266, where the nuisance complained of was a continuing nuisance; see also *Midwood* v. *Manchester Corporation*, [1905] 2 K. B. 597; 69 J. P. 348 (decided with reference to a similar section in the Electric Lighting Clauses Act, 1899, Sched., clause 81), in which it was held that the undertakers were liable in damages for an explosion occasioned by a leakage of electricity from one of their mains which ignited gas escaping into the plaintiff's premises in an adjoining street; see also *Farrell* v. *Limerick Corporation* (1912), 45 Ir. L. T. 169; *Elliott* v. *Battersea Corporation* (1911), 74 J. P. N. C. 627; *Charing Cross, West End and City Electrical Supply Co.* v. *London Hydraulic Power Co.*, [1913] 3 K. B. 442; 77 J. P. 378; and see note (*u*), p. 1947, *post*.

(*r*) See *Chelsea Waterworks Co.* v. *Metropolitan Water Board*, [1904] 2 K. B. 77; *Kent Waterworks* v. *Lamplough*, [1904] A. C. 27; 68 J. P. 361; *In re New River Co. and Metropolitan Water Board* (1904), 20 T. L. R. 687; *Ashton Gas Co.* v. *Att.-Gen.*, [1906] A. C. 10; 70 J. P. 49.

If profits exceed the amount limited, excess to be invested and form a reserved fund.

31. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other securities, and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed a sum equal to one-tenth of the nominal capital of the undertakers, which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen (*s*).

Reserved fund not to be resorted to to meet an extraordinary claim except on certificate.

32. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in England . . . by two justices . . . that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act (*t*).

When fund amounts to prescribed sum, interest to be applied to purposes of the undertaking.

33. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth of the nominal capital of the company, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable (*u*).

If profits are less than the prescribed rate, deficiency may be supplied from the reserved fund.

34. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

If profits are more than the amount prescribed, a rateable deduction to be made in the price of gas.

35. In England . . . the court of quarter sessions . . . may, on the petition of any two gas ratepayers within the limits of the special Act, nominate and appoint some accountant or other competent person, not being a proprietor of any gasworks, to examine and ascertain, at the expense of the undertakers (the amount of such expense to be determined by the said court . . .), the actual state and condition of the concerns of the undertakers, and to make report thereof to the said court at the then present or some following sessions . . . ; and the said court . . . may examine any witnesses upon oath touching the truth of the said accounts and the matters therein referred to; and if it thereupon appear to the said court . . . that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid,

(*s*) See *In re New River Co. and Metropolitan Water Board*, *ante*, p. 1401.

(*t*) Words relating to Scotland and Ireland only are here omitted.

(*u*) Certain consumers of gas brought an action against the company which supplied them on the ground that the company had created a reserve fund greatly in excess of that authorised by its special Acts, and had carried over from year to year large undivided profits, thereby avoiding the obligation upon it to reduce the price of the gas which it so supplied:—*Held*, that no such duty as alleged was imposed by the Acts on the company; that the consumers had no control over the affairs of the company, and were not, therefore entitled to raise the question, the shareholders alone being interested, and that the court could not order the reserve fund and undivided profits to be applied in reduction of the price of the gas in the manner suggested (*Mason* v. *Ashton Gas Co.* (1886), 50 J. P. 628; 54 L. T. (N.S.) 708).

make such a rateable reduction in the rate for gas to be furnished by them as in the judgment of the said court . . . shall be proper, but so as such rates, when reduced, shall ensure to the undertakers (regard being had to the amount of profit before received) a profit as near as may be to the prescribed rate (*x*).

36. Provided always, that if, in the case of any petition so presented, it appear to the said court . . . that there was no sufficient ground for presenting the same, the said court . . . may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court . . . ,) and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act. Court may order petitioner to pay costs of groundless petition.

37. If the undertakers shall, for seven days after being required to produce to the said court . . . , or to the said accountant or other person as aforesaid, any books of account or other books, bills, receipts, vouchers, or papers relating to the pecuniary affairs of the undertakers, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day such refusal or wilful neglect shall continue after the expiration of the said seven days; such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the superior courts. Penalty on undertakers for refusing to produce books, vouchers, etc.

Account.

38. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply gas under the provisions of this or the special Act, cause an account in abstract to be prepared of the total receipts and expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account, if the gasworks be situated in England . . . shall be transmitted, free of charge, to the clerk of the peace for the county in which the gasworks are situate . . . and such transmission shall be made on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk of the peace . . . shall be kept by him, and shall be open to inspection by all persons at all seasonable hours, on payment of one shilling for each inspection (*y*). Annual account to be made up by undertakers.

(*x*) Words relating to Scotland and Ireland only are omitted from this and the two following sections. The court of quarter sessions has no jurisdiction under this section to appoint a gas engineer to assist an accountant appointed thereunder to examine and ascertain the actual state and condition of the concerns of the gas company, and where such order is made a writ of *certiorari* will lie to bring the order up to be quashed (*R.* v. *Brindley* (1886), 50 J. P. 534; 54 L. T. (N.S.) 435).

An order cannot be made to reduce the price of gas under this section unless the whole of the reserve fund has been invested and the prescribed dividend paid; nor can an order be made for the payment of costs by the company to the petitioners. The quarter sessions may inquire into the accounts of past years for the purpose of ascertaining the actual condition of the concern, but they cannot disallow and recast them so as to vary the accounts of the year into which they are inquiring (*R.* v. *Hanley* (*Recorder of*) (1887), 19 Q. B. D. 481; 52 J. P. 100). Where a corporation supply gas they are not bound to give credit for the value of gas supplied for lighting streets or other public purposes (*Att.-Gen.* v. *Oldham Corporation*, Court of Appeal, 5th April, 1892).

(*y*) Words relating to Scotland and Ireland only are omitted from this section. A return must also be sent to the local authority under 34 & 35 Vict. c. 41, s. 35, *post*, p. 1545. As to the annual account under a local Act, see *Leamington Priors Gas Co.* v. *Davis* (1887), 18 Q. B. D. 107; 51 J. P. 360, the facts of which are stated in the note to 34 & 35 Vict. c. 41, s. 35, *post*, p. 1545.

39. (*z*) . . .

Recovery of damages and penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows :

Railway Clauses Acts, as to damages, etc. to be incorporated with this and the special Act.

40. If the gasworks be in England . . . the clauses of the Railways Clauses Consolidation Act, 1845 (*a*), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act . . . (*b*).

41. (*c*) . . .

Acts which may be done by one magistrate.

42. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done in England . . . by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices . . (*b*).

Penalties, etc. within metropolitan police district.

43. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839 ; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act ; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined ; and such witnesses shall be entitled to the same allowance of expenses as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71. Appeal, etc.

44. [*False evidence.*] (*d*)

Access to special Act

And with respect to access to the special Act, be it enacted as follows :

Copies of special Act.

45. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in England . . . of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid ; and the said clerk of the peace . . . shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by the Parliamentary Documents Deposit Act, 1837 (*b*).

7 Will. 4 & 1 Vict. c. 83.

(*z*) Section 39 as to tender of amends was repealed by the S. L. R. A., 1894. See now the Public Authorities Protection Act, 1893, *ante*, p. 963.
(*a*) See *ante*, p. 1369.
(*b*) The parts of this section relating to Scotland and Ireland only are here omitted.
(*c*) Section 41 related only to Ireland, and was repealed by the S. L. R. A., 1875.
(*d*) Repealed by the Perjury Act, 1911.

46. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited. Penalty on undertakers failing to keep or deposit such copies.

47. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein (*e*), or from the laws of sewers for the time being in force within ten miles from the Royal Exchange in the city of London. Saving as to 57 Geo. 3, c. xxix., etc.

48. Nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of her Majesty in right of her Crown, or otherwise howsoever, or any proceedings at law or in equity, by or on behalf of her Majesty, in any part of the United Kingdom of Great Britain and Ireland. Saving as to the rights of the Crown.

49. Nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks, or any Act for improving the sanitary conditions of towns and populous districts, which may be passed in the same session in which the special Act is passed, or any future session of Parliament (*f*). Saving as to future Acts.

*   *   *   *   *

THE WATERWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 17.) (*g*)

An Act for consolidating in One Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water. [23rd April 1847.]

[1.] This Act shall extend only to such waterworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act. Incorporation with special Act.

(*e*) Now called the General Paving (Metropolis) Act, 1817, but better known as Michael Angelo Taylor's Act.

(*f*) The Public Health (Buildings in Streets) Act, 1888, is an "Act for improving the sanitary conditions of towns and populous districts" within the meaning of this section (*Grand Junction Waterworks Co.* v. *Hampton U. D. C.*, [1898] 2 Ch. 331; 62 J. P. 566). The corresponding section of the Waterworks Clauses Act, 1847, s. 93, does not exempt a water company from the provisions of the P. H. A., 1875, and they are therefore bound to comply with the byelaws made under s. 157 of the latter Act (*Uckfield R. D. C.* v. *Crowborough District Water Co.*, [1899] 2 Q. B. 664). See also *London C. C.* v. *Wandsworth and Putney Gas Co.* (1900), 64 J. P. 500; 82 L. T. (N.S.) 562. Section 50 is repealed by the S. L. R. A., 1875.

(*g*) Incorporated in part by the P. H. A., 1875, s. 57, *ante*, p. 129 (together with the amending Act of 1863 (26 & 27 Vict. c. 93), *post*, p. 1488), and also by the P. H. A., 1875 (Support of Sewers), Amendment Act, 1883, *ante*, p. 715. See notes to those Acts.

Interpretation.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

"The special Act."

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of waterworks, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands and streams" shall mean the lands and streams of water which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorised to construct the waterworks.

"Prescribed." "The lands and streams." "The undertaking." "The undertakers."

Interpretations in this and the special Act.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number. Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

Gender. Words importing the masculine gender shall include females:

"Person." The word "person" shall include a corporation, whether aggregate or sole:

"Lands." The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages, of any tenure:

"Streams." The word "streams" shall include springs, brooks, rivers, and other running waters:

"Street." The word "street" shall include any square, court or alley, highway, lane, road, thoroughfare, or public passage or place, within the limits of the special Act (*h*):

"The waterworks." The expression "the waterworks" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed (*i*):

"Water rate." The expression "water rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of water:

"Month." The word "month" shall mean calendar month:

"Superior courts." The expression "superior courts," where the matter submitted to the cognizance of the court arises in England . . . shall mean her Majesty's superior courts of record at Westminster . . . (*k*).

"Oath." The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

(*h*) See *Maddock* v. *Wallasey L. B.*, *ante*, p. 1394. See also as to the meaning of the word "street" in a local Act, incorporating this Act, *Bristol Waterworks Co.* v. *Bristol Corporation* (1889), 5 T. L. R. 551. For the purposes of the application of this Act under s. 57 of the P. H. A., 1875, the term "street" includes a private street (*Hill* v. *Wallasey L. B.*, [1894] 1 Ch. 133). As to the limits of supply, see *Att.-Gen.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 453. As to the delegation of statutory powers, see *Ticehurst and District Water and Gas Co., Ltd.* v. *Gas and Waterworks Supply and Construction Co., Ltd.* (1911), 55 Sol. Jo. 459; *In re Woking U. D. C.* (*Basingstoke Canal*) *Act*, 1911, [1914] 1 Ch. 300.

(*i*) As to the power of the undertakers to construct works other than those authorised by the special Act, see *Att.-Gen.* v. *Frimley and Farnborough District Water Co.*, [1908] 1 Ch. 727; 72 J. P. 204; *Att.-Gen.* v. *South Staffordshire Waterworks Co.*, (1909) 25 T. L. R. 408; *Marriott* v. *East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70; 72 J. P. 509; *Att.-Gen.* v. *Barnet District Gas and Water Co.* (1910), 74 J. P. 193; 102 L. T. 546.

The word "county" shall include riding or other division of a county having a separate commission of the peace . . . (*k*), and it shall also include county of a city or county of a town: "County."

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise in respect of lands or streams situated not wholly in one jurisdiction shall mean a justice acting for the county or place where any part of such lands or streams shall be situated; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together (*k*): "Justice." "Two justices."

. . . . .

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the waterworks, or the principal office thereof, for the county or place in which the waterworks, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace: "Quarter sessions."

The expression "the town commissioners" shall mean the parties defined under that title in the special Act, and where no such parties shall be there defined shall mean the commissioners, trustees, or other parties having the control or management of the streets under any Act for paving or improving the town or district to be supplied with water under the special Act: "The town commissioners."

The word "inspector" shall mean an officer appointed under any local Act relating to the town or district supplied with water under the special Act for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or an officer appointed under any general Act for executing the like duties with respect to such town or district together with other towns or districts. "Inspector."

Citing the Act.

And with respect to citing this Act, or any part thereof, be it enacted as follows:

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Waterworks Clauses Act, 1847." Short title of this Act.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates. Form in which portions of this Act may be incorporated in other Acts.

* * * * *

Mines.

And with respect to mines, be it enacted as follows (*l*):

18. The undertakers shall not be entitled to any mines of coal, ironstone, slate, or other minerals (*m*) under any land purchased by them, except Undertakers not entitled to mines unless expressly purchased.

(*k*) Words relating to Scotland and Ireland only are here omitted.

(*l*) These sections, 18—27, are incorporated by the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, *ante*, p. 715. These sections amount to a code defining

(*m*) For note (*m*) see p 1408.

only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Map and plan of underground works to be made, and corrected from time to time.

19. The undertakers shall from time to time, within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any pipes or underground works shall be laid, on a

and regulating the mutual rights of water companies and owners of minerals (*South Staffordshire Waterworks Co.* v. *Mason* (1887), 56 L. J. Q. B. 255; 57 L. T. (N.S.) 116). They very closely resemble ss. 77—82 of the Railways Clauses Consolidation Act, 1845, and the cases decided under that Act may be referred to:—particularly *Midland Rail. Co.* v. *Miles* (No. 1) (1885), 30 Ch. D. 634; *Midland Rail. Co.* v. *Miles* (No. 2) (1885), 33 Ch. D. 632, and *Maritime Coal Co.* v. *Barry Dock and Rail. Co.* (1886), 2 T. L. R. 803.

Where land is acquired by agreement for the purposes of constructing waterworks under a special Act which incorporates the Waterworks Clauses Act, 1847, and the undertakers purchase all the mines and minerals under the land so taken, they acquire all the rights of support from minerals under adjacent lands which the vendor had at common law at the time the land was taken. In such a case, ss. 18—27 of the Waterworks Clauses Act, 1847, do not take away the common law right of support from minerals under adjacent lands, or give the owners of such minerals any greater right to work them, so as to let down the surface of the land taken as against the undertakers, than they had against the vendor before the land was taken. In such a case, and, *semble*, in all cases these sections have no reference to lands outside the limit of forty yards, or other limit prescribed by the special Act. The rights of the undertakers and the owner of such minerals in relation to their working are governed by the common law (*Manchester Corporation* v. *New Moss Colliery, Ltd.*, [1908] A. C. 117; 72 J. P. 169; and see *Howley Park Coal and Cannel Co.* v. *L. & N. W. Rail. Co.*, [1913] A. C. 11).

(*m*) A great number of cases have been decided as to what substances are included in the term minerals. It is necessary to remember that the description of the mines in other Acts or in leases is not always the same, and that the words "other minerals" may not always be *ejusdem generis* with those set out in the text, although they are so in reference to the form of words used in the particular case. The following authorities should be consulted. As to freestone, it was held in *Bell* v. *Wilson* (1866), L. R. 1 Ch. 303, to be a mineral, but see now *Symington* v. *Caledonian Rail. Co.*, [1912] A. C. 87, where it was held to be a question of fact in each case. Minerals, stone got from quarries (*Micklethwait* v. *Winter* (1871), L. R. 6 Ex. 644; granite from quarries (*Att.-Gen.* v. *Welsh Granite Co.* (1887), 35 W. R. 617; 1 T. L. R. 549); slate (*Cleveland* v. *Meyrick* (1868), 37 L. J. Ch. 124; 17 L. T. 238); coprolites (*Att.-Gen.* v. *Tomline* (1878), 5 Ch. D. 750); oil shale (*Marquis of Linlithgow* v. *North British Rail. Co.*, [1912] S. C. 1327); every substance which can be got from underneath the surface of the earth for purposes of profit, such as china clay (*per* MELLISH, L.J., in *Hext* v. *Gill* (1872), L. R. 7 Ch. 712); all substances obtained from the crust of the earth, other than the surface soil (*Anstruther* v. *Inland Revenue Commissioners*, [1912] S. C. 1165); clay (*Midland Rail. Co.* v. *Checkley* (1867), L. R. 4 Eq. 19); brick-earth and clay below the surface (*Jersey* (*Earl*) v. *Neath Guardians* (1889), 22 Q. B. D. 555; 53 J. P. 404; *Shaftesbury* v. *Wallace*, [1897] 1 I. R. 381); china clay (*G. W. Rail. Co.* v. *Carpalla United China Clay Co., Ltd.*, [1910] A. C. 83; 74 J. P. 57); fireclay (*Caledonian Rail. Co.* v. *Glenboig Union Fireclay Co.*, [1911] A. C. 290; 75 J. P. 377); but not common clay forming the surface or subsoil of land (*Glasgow Magistrates* v. *Farie* (1891), 13 App. Cas. 657; *Shaftesbury* v. *Wallace*, [1897] 1 I. R. 381; *Re Todd and N. E. Rail. Co.*, [1903] 1 K. B. 603; 67 J. P. 105; *G. W. Rail. Co.* v. *Blades*, [1901] 2 Ch. 624; 65 J. P. 791; *North British Rail. Co.* v. *Turners* (1904), 6 F. 900); clay which is not commercially workable and stone which is unfit for building purposes are not minerals (*Skey* v. *Parsons* (1909), 101 L. T. 103; 25 T. L. R. 708). Gravel and sand were held to be minerals in *Scott* v. *Midland Rail. Co. and G. N. Rail. Co.*, [1901] 1 K. B. 317; 65 J. P. 135; but in *Staples* v. *Young*, [1908] 1 I. R. 135, it was held to be a question of fact in each case, and sand was held not to be a mineral when it was covered by a thin layer of soil only. See also *Skey* v. *Parsons*, *supra*. Sandstone was held to be a mineral in *Greville* v. *Hemingway* (1903), 87 L. T. 443; but not so in *North British Rail. Co.* v. *Budhill Coal and Sandstone Co.*, [1910] A. C. 116. As to whinstone, see *Forth Bridge Rail. Co.* v. *Dunfermline Guildry*, [1910] S. C. 316. As to mounds of tap-cinder produced in working ironstone mines, see *Boileau* v. *Heath*, [1898] 2 Ch. 301. And as to what is included in an exception of mines and minerals in a lease, see *Johnstone* v. *Crompton*, [1899] 2 Ch. 190. The mines referred to in the section include those which can only be worked by open or surface operations (*Midland Rail. Co.* v. *Robinson* (1890), 15 App. Cas. 19; 54 J. P. 580).

scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act; and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district (*n*).

Copies of such map or plan to be deposited with clerk of the peace, etc.

20. The undertakers shall from time to time, within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in England . . . of every county . . . in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in England . . . in which such underground work shall be situate, copies of the said map or plan, with all such particulars and all such corrections and additions as aforesaid, so far as relates to such counties . . . and parishes respectively (*o*).

Clerks of the peace, etc. to receive and keep copies of the map, etc. and allow inspection

21. The said clerks of the peace . . . and . . . parish clerks . . . shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of maps and plans deposited under the Parliamentary Documents Deposit Act, 1837 (*p*).

7 Will. 4 & 1 Vict. c. 83.

As to working of mines lying near the works.

22. Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be underground and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do, thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owner do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation (*q*).

(*n*) The map required to be made by 46 & 47 Vict. c. 37, s. 3, *ante*, p. 716, was to be made before August 25th, 1884.

(*o*) Words in this section relating to Scotland and Ireland only are omitted. A company who have not deposited a survey and map in accordance with this section have no right to the support of the soil in which their pipes are laid as against the owner of the minerals underneath (*South Staffordshire Waterworks Co.* v. *Mason* (1887), 56 L. J. Q. B. 255; 57 L. T. 116).

(*p*) Words in this section relating to Scotland and Ireland only are omitted.

(*q*) See 46 & 47 Vict. c. 37, s. 3, as to the power of a local authority to define the extent to which they require support to be left, and as to the mode of assessing compensation. To

If undertakers do not state their willingness to treat for payment of compensation, owner may work the mines.

23. If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same, by means of engines or otherwise, as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner, the same shall be forthwith repaired or removed (as the case may require), and such damage made good by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts (*r*).

justify a notice under this section there must be a bonâ fide intention to work the mines by the owner or his lessees or licensees (*Midland Rail. Co.* v. *Robinson, ante*, p. 1408). The service of a notice under this section requiring the owner to abstain from working his minerals has, like a notice to treat under the Lands Clauses Acts, the effect of creating a statutory contract between the parties whereby the one party is bound to abstain from working his minerals and the other is bound to make compensation therefor. The award in the arbitration is final both as to the amount of compensation to be paid and (unless the title of the mineral owner is in dispute) as to the obligation of the undertakers to pay the amount (*Clippens Oil Co., Ltd.* v. *Edinburgh and District Water Trustees* (1901), 38 Sc. L. R. 354).

If the party entitled to the minerals begins working without giving the notice, the undertakers may bring an action for an injunction and damages, but the wrongful working does not debar the party from afterwards giving the notice and claiming compensation (*Edinburgh and District Water Trustees* v. *Clippens Oil Co., Ltd.* (1898), 25 Ct. of Sess. Cas. (4th ser.) 504).

Where there has been a rise in the value of mineral since the notice, and but for the notice the mine owner would have obtained the benefit of the rise, consideration must be had to the rise in assessing the compensation (*Bwllfa and Merthyr Dare Steam Collieries* v. *Pontypridd Waterworks Co.*, [1903] A. C. 426).

The compensation payable by a railway company under s. 78 of the Railways Clauses Consolidation Act, 1845, in respect of such mines as they require to be left unworked is the full value of the minerals required to be left unworked, namely, what the minerals would have sold for if worked, less the cost of working them (*Eden* v. *N. E. Rail. Co.*, [1907] A. C. 400; 71 J. P. 450). Where the minerals had no marketable value but were of value to the claimants who had a cement factory close by, it was held that their value to the claimants was what they might fairly be expected to have made by working in the ordinary and reasonable manner in which they would have been worked but for the notices to treat; that the profits which they would have made by turning them into cement might properly be taken into consideration by an arbitrator as an indication, though not as a measure, of that value; and that the value was not affected by the fact that the claimants owned large quantities of the same minerals which they might have worked instead of the minerals in question (*Rugby Portland Cement Co.* v. *L. & N. W. Rail. Co.*, [1908] 2 K. B. 606; 72 J. P. 245). A county council, acting under the Small Holdings and Allotments Act, 1908, and an Order of the Board of Agriculture which incorporated ss. 77 and 78 of the Railways Clauses Consolidation Act, 1845, gave notice to treat to the owner of a farm. In arbitration proceedings it was contended that the arbitrator should take into consideration the fact that the council merely acquired an interest in the surface without a right to support It was held, that in assessing the value of the land the arbitrator was to deal with it as if there were no mines to be considered, and nothing but the surface; that the legislature had conferred rights upon purchasers in substitution for the common law right of support, and that the arbitrator was entitled, although he might not be actually bound, to disregard the absence of a right to support when assessing the value (*Carlisle (Executrix of Earl)* v. *Northumberland C. C.* (1911), 75 J. P. 539; 105 L. T. 797. See also *Butterley Co., Ltd.* v. *New Hucknall Colliery Co., Ltd.*, [1910] A. C. 381; *Howley Park Coal and Cannel Co.* v. *L. & N. W. Rail. Co., ante*, p. 1408.

As to the right to interest upon an award of compensation, see *Fletcher* v. *L. & Y. Rail. Co.*, [1902] 1 Ch. 901; 66 J. P. 631; and *Richard* v. *G. W. Rail. Co.*, [1905] 1 K. B. 68; 69 J. P. 17.

(*r*) The mines may be worked by open workings if that is usual in the district (*Midland Rail. Co.* v. *Miles, ante*, p. 1408); and see *Midland Rail. Co.* v. *Robinson, ante*, p. 1408;

Mining communications.

24. If the working of any such mines under the said works of the undertakers or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Undertakers to make compensation to owner, lessee, or occupier of mines for expenses incurred by severance of mines, or by interruptions of or restrictions on works, and for minerals not obtained.

25. Except where otherwise provided for by agreement, the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act, and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid; and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid touching the price of such minerals, the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act, if the undertaking shall be situate in England . . . (*s*).

Disputes to be settled by arbitration.

Power to undertakers to enter and inspect the working of mines, after giving notice of the same.

26. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works, it shall be lawful for the undertakers, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

Nothing to prevent undertakers from being liable to actions for injury done to mines.

27. Nothing in this or the special Act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by

Ruabon Brick and Terra Cotta Co. v. *G. W. Rail. Co.*, [1893] 1 Ch. 427; *In re An Arbitration between Lord Gerard and L. & N. W. Rail. Co.*, [1895] 1 Q. B. 459. See further, as to the right to work the mines so as to let down the surface, *Consett Waterworks Co.* v. *Ritson* (1884), 22 Q. B. D. 318, 702; 53 J. P. 373. For a case involving a claim to work mines under a canal in pursuance of a special Act, see *Knowles* v. *L. & Y. Rail. Co.* (1885), 14 App. Cas. 248; 54 J. P. 103. Apparently the undertakers could not be compelled by *mandamus* to reinstate the waterworks if damaged by the working of the mines. See *R.* v. *G. W. Rail. Co.* (1894), 62 L. J. Q. B. 572; 58 J. P. 74.

(*s*) Words relating to Scotland and Ireland only are here omitted. See 46 & 47 Vict. c. 37, s. 3 (4), as to the method of settling disputes as to compensation. As to the compensation which may be claimed, see *Whitehouse* v. *Wolverhampton and Walsall Rail. Co.* (1870), L. R. 5 Ex. 6; 21 L. T. 558; *Barnsley Canal Navigation Co.* v. *Twibell* (1844), 7 Beav. 19; *Ex parte Neath and Brecon Rail. Co.* (1876), 2 Ch. D. 201; *Holliday* v. *Wakefield Corporation*, [1891] A. C. 81; 55 J. P. 325.

means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act (*t*).

Laying of pipes.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows (*u*) :

Power to break up streets, etc. under superintendence, and to open drains, and to lay pipes, etc.

28. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes (*x*), and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby (*y*) or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers (*z*).

(*t*) This section is limited to damage to mines (*per* VAUGHAN WILLIAMS, J., in *Harrison* v. *Southwark and Vauxhall Water Co.*, [1891] 2 Ch., at p. 415).

(*u*) Sections 28—34 are incorporated by the P. H. A., 1875, s. 57, *ante*, p. 129. See also s. 149 of that Act, and the notes thereto ; and the corresponding clauses of the Gasworks Clauses Act, 1847, *ante*, p. 1395.

(*x*) See *Grand Junction Waterworks Co.* v. *Rodochanachi*, [1904] 2 K. B. 230 ; 68 J. P. 290 ; *Colne Valley Water Co.* v. *Hall* (1907), 72 J. P. 25 ; 98 L. T. 398 ; *Parnell* v. *Portsmouth Waterworks Co.* (1911), 75 J. P. 99; 8 L. G. R. 1029. And as to "mains," see *Whittington Gas Light and Coke Co.* v. *Chesterfield Gas and Water Board, ante*, p. 1395.

(*y*) See *Swansea Corporation* v. *Harpur*, [1913] A. C. 597 ; 77 J. P. 381.

(*z*) Where under a special Act incorporating this Act, a water company has within the period fixed by the special Act for the completion of its works laid a main according to deposited plans, the company may, after the expiration of that period, lay down a second main having regard to this Act, and particularly where the special Act gives them power to "extend, enlarge or alter any of their mains or pipes at any time and from time to time as occasion may require, for the purpose of supplying the inhabitants within the limits of the Act with water," due regard being had to the requirements of the special and general Acts as to notice and otherwise before breaking up the road for the purpose (*East Molesey L. B.* v. *Lambeth Waterworks Co.*, [1892] 3 Ch. 290). The power given by this section includes any works which the undertakers may deem necessary for the purpose of regulating the supply of water, and is not confined to the laying down of apparatus underground, but enables the undertakers to place such works on the surface of the street as may not be inconsistent with the substantial reinstatement of the road in its previous condition or create a nuisance ; and it was held, therefore, that a water company was authorised by the section to place in the pavement of a street covers or guard-boxes to protect stop-valves placed for the purpose of regulating the supply of water in the communication pipes by which water was supplied to premises in the street, such covers or guard-boxes not creating a nuisance or being inconsistent with the substantial reinstatement of the pavement (*East London Waterworks Co.* v. *St. Matthew, Bethnal Green, Vestry* (1886), 17 Q. B. D. 475 ; 50 J. P. 820). Where the cover of such a guard-box to a stop-cock attached to a service pipe supplying a private house was out of repair and could not be repaired without breaking up the street, and an accident occurred by a foot passenger tripping over it, the company were held liable, even assuming that the property in the guard-box was in the occupier of the private house, because the company had power to break up the street to repair it, which the occupier could not do (*Chapman* v. *Fylde Waterworks Co.*, [1894] 2 Q. B. 599 ; 59 J. P. 5). The case of *Batt* v. *Metropolitan Water Board*, [1911] 2 K. B. 965 ; 75 J. P. 545, does not apply to a borough where this Act is in force. See also *Osborn* v. *Metropolitan Water Board* (1910), 74 J. P. 190 ; 102 L. T. 217 ; *Rosenbaum* v. *Metropolitan Water Board* (1910), 75 J. P. 12 ; 103 L. T. 739 ; *Stacey* v. *Gas Light and Coke Co. and Metropolitan Water Board* (1910), 9 L. G. R. 174. The section merely enables a water company to lay pipes under streets in connection with the undertaking authorised by their special Acts, and if they are being laid in connection with unauthorised works the owner of the soil can sue the water company in trespass, raise the question of *ultra vires* and obtain an injunction without joining the Attorney-General (*Marriott* v. *East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70 ; 72 J. P. 509).

Public water commissioners in Scotland had statutory authority to lay a line of water pipes along a road which passed over two girder bridges belonging to a railway company.

Undertakers not to enter on private land without consent.

29. Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use (*a*) without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

Notice to be served on persons having control, etc. before breaking up streets or opening drains.

30. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

31. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof (*b*), or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation,

These bridges were constructed of several flat girders with spaces between them. Small transverse girders were placed on these main girders and supported iron sole plates forming a floor on which the material for the roadway was placed. This construction gave the bridges a very thin skin, within which there was not sufficient space to lay the water mains. Accordingly, the commissioners wanted to remove the sole plates and hang their water mains by iron bars attached to the cross-girders, carrying the pipes through the stone abutments forming the solid ends of the bridges on either side above the cuttings :—*Held*, that the powers conferred by ss. 28 and 29 of this Act did not entitle the commissioners to interfere with the weight-bearing portions of the bridges and they were interdicted from doing what they proposed (*Glasgow and South Western Rail. Co.* v. *Glasgow Magistrates*, [1895] A. C. 376; 59 J. P. 788). This case was followed in another Scotch case, *Caledonian Rail. Co.* v. *Glasgow Corporation* (1901), 3 F. 526, where it was also held that "tunnels" meant tunnels similar in character to sewers and drains and did not apply to a railway tunnel, and that the right to interfere with did not warrant the permanent displacement or removal of tunnels.

(*a*) A public street or footpath is "land dedicated to public use," so that pipes in connection with authorised works could be laid without the consent of the owner of the soil (*Marriott* v. *East Grinstead Gas and Water Co.*, *ante*, p. 1412). See further note (*t*), *ante*, p. 1395.

(*b*) That is, after notice to the highway authority sufficient to enable them to judge whether what is proposed ought to be done without modification (*Edgware Highway Board* v. *Colne Valley Water Co.* (1877), 46 L. J. Ch. 889). In the same case it was held that the plan should show not only the mode and manner of opening the street, but also the depth and position of the cutting, and such other particulars as would enable the road authority to judge whether what was proposed to be done should be accepted without modification without going to the justices. This was approved of by the Court of Appeal in *East Molesey L. B.* v. *Lambeth Waterworks Co.*, [1892] 3 Ch. 289.

the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer (*c*).

Streets, etc. broken up to be reinstated without delay.

32. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept thereagainst, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside (*d*).

Penalty for delay in reinstating streets, etc.

33. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or, if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay, persons having control of streets, etc. may reinstate them.

34. If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same way as damages are recoverable under this and the special Act (*e*).

* * * * *

(*c*) Compare *Metropolitan Water Board* v. *Bradley* (1910), 74 J. P. 331; 102 L. T. 893.

(*d*) The mere passive omission by a road authority to rectify a subsidence in a road in their area which has been originally occasioned by the neglect of a water company to make the road after having broken it up for the purposes of their undertaking does not exonerate the water company from liability for an injury caused to a person using the road by reason of the subsidence (*Hartley* v. *Rochdale Corporation*, [1908] 2 K. B. 594; 72 J. P. 343).

(*e*) See the P. H. A., 1875, s. 251, *ante*, p. 550. It would seem that if the local authority employ a contractor to do the work they may recover from the undertakers not only the sums paid to the contractor for the work actually done by him, but also the expenses reasonably incurred in superintending the work done by the contractor (*New River Co.* v. *Westminster City Council* (1904), 73 L. J. K. B. 1009; 68 J. P. 358); but they cannot recover any sum in respect of such supervision, if in fact they have incurred no expense in respect thereof (S. C. *sub nom. Metropolitan Water Board* v. *Westminster City Council* (1905), 75 L. J. K. B., 384; 70 J. P. 52).

And with respect to the communication pipes to be laid by the undertakers, be it enacted as follows (*f*) :

Pipes to be laid by the undertakers.

Undertakers to lay down communication pipes, on request of occupier and with consent of owners.

44. The undertakers shall, upon the request of the owner of any dwelling-house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier *with the consent in writing of the owner, or reputed owner, of any such house, or of the agent of such owner* (*g*), and upon payment or tender of the proportion of water rate in respect of such house by this or the special Act, made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent (*h*) as shall be agreed upon, or, in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in England . . . be settled by two justices . . . and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates; and such pipes and other works shall not be subject to distress . . . nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions hereinafter contained (*i*).

Penalty on undertakers for neglect, etc. to lay communication pipes.

45. If, upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

On non-payment of rate, or if house be unoccupied, undertakers may remove pipes, etc. provided by them.

46. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines; and if such owner, after ten days notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrears of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the

(*f*) Sections 44—74 are incorporated by the P. H. A., 1875, s. 57, *ante*, p. 129. The proviso to that section provides that the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof.

(*g*) These words are to be omitted. See the P. H. A., 1875, s. 57, *ante*, p. 129. As to the meaning of the expression "consumer" in a special Act, see *Cooke* v. *New River Co.* (1889), 14 App. Cas. 698; 54 J. P. 260.

(*h*) This rent may be deducted from the rent paid to the owner. See the P. H. A., 1875, s. 57, *ante*, p. 129.

(*i*) Words relating to Scotland and Ireland only are omitted from this section.

occupier for the time being, in the same manner as water rates are directed by this or the special Act to be recovered: Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid, on demand.

Owner to be at liberty to purchase the pipes.

47. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

Pipes to be laid by the inhabitants.

And with respect to the communication pipes to be laid by the inhabitants, be it enacted as follows:

Power to inhabitants to lay service pipes from houses to pipes of undertakers.

48. Any owner or occupier of any dwelling-house, or part of a dwelling-house within the limits of the special Act who shall wish to have water from the waterworks of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground (*k*), and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in England . . . by two justices . . . or in either case by the inspector to be appointed as aforesaid: Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days notice of his intention to do so (*l*).

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor.

49. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in England . . . be settled by two justices . . . or in either case by the inspector to be appointed as aforesaid (*l*).

Bore of service pipes.

50. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Service pipes may be removed, after giving notice.

51. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days notice in writing to the undertakers of his inten-

(*k*) The ground referred to must be private ground intervening between his premises to be supplied and the water main. Power to open streets is given in express terms by s. 52.

(*l*) Words relating to Scotland and Ireland are omitted from this section. An action lies for cutting off by the undertakers of a connection lawfully and properly made without lawful cause (*Gale* v. *Rhymney and Aber Valleys Gas and Water Co.* (1903), 67 J. P. 430; 89 L. T. (N.S.) 399). As to the liability to repair communication pipes, see *Parnell* v. *Portsmouth Waterworks Co.* (1911), 75 J. P. 99; 8 L. G. R. 1029.

tion so to do, and of the time of such proposed removal, and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Penalty for removing pipes without notice.

52. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises (*m*), and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be (*n*), and making compensation for any damage done in the execution of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special Act (*o*).

Power to inhabitants to break up pavements, etc.

53. Every owner and occupier of any dwelling-house (*p*) or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered (*q*) the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers (*r*) a sufficient supply of water for his domestic purposes (*s*).

Right of owners or occupiers to supply of water for domestic purposes.

(*m*) See *Pearson* v. *Tenterden Corporation* (1910), 74 J. P. 405.

(*n*) See *R.* v. *East and West India Docks, etc. Rail. Co.*, *ante*, p. 1396.

(*o*) A waterworks company is not liable for the negligence of an occupier in opening a street under this section. The word "pavement" as used in this section is not confined to the footpath only. See *Glover* v. *East London Waterworks Co.* (1867), 17 L. T. (N.S.) 475; 16 W. R. 310.

As to the power of a company to require a consumer to fix a screw-down valve in the street to shut off water from the premises as apparatus for regulating the supply within the meaning of a special Act, see *Ward* v. *Folkestone Waterworks Co.* (1890), 24 Q.B. D. 334; 54 J. P. 628.

(*p*) As to what is a "private dwelling-house," see *Bristol Guardians* v. *Bristol Waterworks Co.*, [1914] W. N. 72; 30 T. L. R. 296.

(*q*) The occupier of premises used as a post office which were not rated has been held to be entitled to a supply of water for domestic purposes as of right without prepayment of the water rate (*Postmaster-General* v. *Nenagh U. D. C.*, [1913] 1 I. R. 238).

(*r*) See *Pitts* v. *Plymouth Corporation*, [1912] 3 K. B. 301.

(*s*) As to the duty of the company to supply water fit for domestic use, see *Att.-Gen.* v. *North Shields Waterworks Co.*, Times, May 12th, 1892. The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling-house, and used for the sole accommodation of the occupier, was held to be for *domestic use* in *Bushby* v. *Chesterfield Waterworks Co.* (1858), 22 J. P. 689; El. B. & E. 176. But see 26 & 27 Vict. c. 93, s. 12, *post*, p. 1490. The guardians of a union are entitled under this section to supply to a workhouse, such a supply being for domestic purposes (*Liskeard Union* v. *Liskeard Waterworks* (1881), 7 Q. B. D. 505; 45 J. P. 780), but the court will distinguish between the different purposes for which water is supplied to such an institution (*Chester Waterworks Co.* v. *Chester Union* (1908), 72 J. P. 121; 98 L. T. 701). This case was discussed and followed in *Frederick* v. *Bognor Water Co.*, [1909] 1 Ch. 149; 72 J. P. 501, decided under a special Act, in which it was held that the keeping of a boarding school in which water was used for the domestic purposes of all the inmates was not carrying on a "business for which water is required." The phrase "domestic purposes" includes a supply for a fixed bath (*Weaver* v. *Cardiff Corporation* (1883), 47 J. P. 599; 48 L. T. (N.S.) 906), unless baths are excluded by express words (*Walker* v. *Lambeth Waterworks Co.* (1894), 58 J. P. 736; 71 L. T. (N.S.) 75); and a supply of water for a swimming-bath erected and used for the purposes of the business of a school is not a supply for "domestic purposes" (*Barnard Castle U. D. C.* v. *Wilson*, [1902] 2 Ch. 746, and see *Frederick* v. *Bognor*

Protection of water.

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows:

Persons using water not required to be laid on at high pressure to provide cisterns, etc.

54. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied, with a ball and stop-cock, in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball, and stop-cock in good repair so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect

Penalty for neglect.

Water Co., supra). On the other hand, water supplied for domestic purposes is none the less so supplied because the house may be used as a boarding house (*Pidgeon* v. *Great Yarmouth Waterworks Co.*, [1902] 1 K. B. 310; 66 J. P. 309), or as a school (*South West Suburban Water Co.* v. *St. Marylebone Guardians*, [1904] 2 K. B. 174; 68 J. P. 257). It has been held that water for domestic purposes does not include water for watering a garden (*per* JESSEL, M.R., in *Low* v. *Lambeth Waterworks Co.*, not reported, and see 26 & 27 Vict. c. 93, s. 12, *post*, p. 1490). See, however, *Bristol Waterworks Co.* v. *Uren*, *post*, p. 1423, and *Grand Junction Waterworks* v. *Neal* (1895), 30 L. J. Newsp. 85. And water used by a person carrying on the profession of a physician or surgeon for washing a motor car used in his profession is not supplied for a trade manufacture or business within 26 & 27 Vict. c. 93, s. 12, so as to be excluded from being considered as supplied for domestic purposes (*Harrogate Corporation* v. *Mackay*, [1907] 2 K. B. 211; 71 J. P. 458). A gas company provided at their works certain sanitary conveniences as required by the Factory and Workshop Act, 1901. No one resided at the works, which were exempt from inhabited house duty. It was held that the question was not the character of the premises, but the character of the purposes for which the water was used; that the supply in question was for domestic purposes; and that the company were not entitled to a supply by meter as for trade purposes under s. 16 of the Metropolitan Water Board (Charges) Act, 1907 (*South Suburban Gas Co.* v. *Metropolitan Water Board*, [1909] 2 Ch. 666; 73 J. P. 503). Water supplied to urinals and water-closets at a railway station and to a tap used for drinking purposes and for cleansing the platforms is not supplied for domestic purposes (*Metropolitan Water Board* v. *L. B. & S. C. Rail. Co.*, [1910] 2 K. B. 890; 74 J. P. 409). A supply of water to a factory for drinking and washing by workmen employed there and for urinals and water-closets provided for their use is a supply for domestic purposes (*Colley's Patents, Ltd.* v. *Metropolitan Water Board*, [1912] A. C. 24; 76 J. P. 33). Water supplied for a public-house, where in addition to the ordinary consumption of water, in such a case a catering business is carried on, is water supplied for domestic purposes (*Metropolitan Water Board* v. *Avery*, [1914] A. C. 118; 78 J. P. 121). It is not easy to reconcile with this decision the case of *Airdrie, Coatbridge and District Water Trustees* v. *Flanagan* (1906), 8 F. 932, where water supplied for a public-house mainly for sanitary purposes and cooking was held not to be a supply for domestic purposes. A golf club-house in which no one slept was held not to be a "house," and therefore not entitled to a supply of water at the domestic rate (*Fergusson* v. *Prestwick* (*Provost, etc. of*), [1909] S. C. 94, decided under the Burgh Police (Scotland) Act, 1892, ss. 4, 263, 264). Where such extra charges are expressly authorised for water-closets, that means water-closets used as such and having water laid on to them (*Roberts* v. *South Essex Waterworks Co.* (1903), 1 L. G. R. 719).

Where a supply was cut off for non-payment of water rates, the company were held not warranted in refusing to supply a subsequent tenant until his arrears were paid (*Sheffield Waterworks Co.* v. *Wilkinson* (1879), 4 C. P. D. 410). See, further, as to the cutting off of a supply, 50 & 51 Vict. c. 21, *post*, p. 1793.

As to the right of a company to cut off the supply when the consumer has failed to provide a meter for water supplied for purposes other than for "family use," see *Sheffield Waterworks Co.* v. *Carter* (1882), 8 Q. B. D. 632; 46 J. P. 548. And as to the obligation to provide a meter in such case, see *Sheffield Waterworks Co.* v. *Bingham* (1884), 25 Ch. D. 443.

The company are only bound to furnish a reasonable supply, that is, a supply which is reasonable according to the means at their disposal (*Jackson* v. *Farnham Water Co.* (1887), 3 T. L. R. 632).

As to drought being an unavoidable cause preventing the supply and excusing the undertakers from furnishing a sufficient supply, see *Industrial Dwellings Co.* v. *East London Waterworks Co.* (1894), 58 J. P. 430.

As to the meaning of the words "require a supply of water" in s. 17 of the Metropolitan Water Board (Charges) Act, 1907, see *Metropolitan Water Board* v. *Johnson & Co.*, [1913] 3 K. B. 900; 77 J. P. 384.

to provide such cistern, ball, or stop-cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop-cock shall be provided or repaired, as the case may require (*t*).

55. Every person supplied with water by the undertakers who shall suffer any such cistern, pipe, ball, or stop-cock to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds (*u*). Penalty for suffering cistern, etc. to be out of repair so that water is wasted.

56. The undertakers may repair any such cistern, pipe, ball, or stop-cock, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received (*x*) as damages. Undertakers may repair cisterns, etc.

57. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act in order to examine if there be any waste or misuse of such water; and if such surveyor or other person at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises. Power to undertakers' surveyor to enter houses to inspect, etc.

58. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds. Penalty for allowing persons to use water supplied by undertakers.

59. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, watercourse, or conduit belonging to the undertakers, or any pipe leading to any such reservoir, watercourse, or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding ten pounds (*y*). Penalty for taking water belonging to undertakers without agreement.

(*t*) Where a company were entitled to require the provision of "proper ball and stop-cocks, or other necessary apparatus for regulating the supply," it was held that they could not require a screw-down valve to be inserted in the communication pipe laid in the street so that the water might be shut off from the premises on any indication of waste (*Ward* v. *Folkestone Waterworks Co.*, *ante*, p. 1417).

As to the conditions of constant supply in the metropolis, see *West Middlesex Waterworks Co.* v. *Tappenden* (1888), 5 T. L. R. 477.

(*u*) Section 55 was repealed by the S. L. R. A., 1875, so far as it relates to special Acts with which 26 & 27 Vict. c. 93, *post*, p. 1488, is incorporated. The owner of a house let to a tenant upon a weekly tenancy, but himself liable to payment of the water rate by reason of the house being under the annual value of £10 (see s. 72, *post*, p. 1425), is "a person supplied with water" within the meaning of this section (*Brock* v. *Harrison*, [1899] 1 Q. B. 958; 63 J. P. 455).

(*x*) *Sic* in Parliament Roll. It should of course be "recovered."

(*y*) Section 59 is repealed by the S. L. R. A., 1875, to the same extent as s. 55, *ante*. This section provides no penalty for taking water from an unoccupied house. See *Piercy* v. *Pope* (1882), 46 J. P. 102; 45 L. T. (N.S.) 477. See also, with reference to this section, *Hildreth* v. *Adamson*, *ante*, p. 139. As to larceny of water, see *Ferens* v. *O'Brien*, *ante*, p. 132.

A section in a special Act provided that if any person should wilfully waste the water of the company, or apply it to any purpose other than that agreed upon, he should be liable to a penalty. It was held that this section did not apply to a case where water, after being

Penalty for destroying valves, drawing off water, etc.

60. Every person who shall wilfully or carelessly break, injure, or open any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Fouling the water.

And with respect to the provisions for guarding against fouling the water of the undertakers, be it enacted as follows (*z*) :

Penalties for causing the water of the undertakers to be fouled, etc.

61. Every person who shall commit any of the offences next hereinafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding five pounds; (that is to say,)

Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or wash, throw, or cause to enter therein any dog or other animal :

Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct, or other waterworks as aforesaid, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing :

Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled :

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last-mentioned offence shall be continued.

enalty for ermitting substances produced in making gas to flow into the streams or works of the undertakers.

62. Every person making or supplying gas within the limits of the special Act who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, or waterworks belonging to the undertakers, or into any drain communicating therewith, any washing or other substance which shall be produced in making or supplying gas, or who shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks shall be fouled, shall forfeit to the undertakers for every such offence the sum of two hundred pounds; and such penalty shall be recovered, with full costs of suit, in any of the superior courts; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased (*a*).

Daily penalty during the continuance of the offence.

63. In addition to the said penalty of two hundred pounds, and whether such penalty have been recovered or not, the person making or supplying gas as aforesaid shall forfeit to the undertakers the sum of twenty pounds, to be recovered in like manner, for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the act shall continue by which such water is fouled, after the expiration in either case of twenty-four hours from the time when notice of the offence has been served on such person by the undertakers.

Penalty on gas makers causing water to be fouled.

64. Whenever the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of the special Act, such person shall forfeit to the undertakers for every such offence a

used for ordinary domestic purposes, was conveyed into an apparatus for flushing a water-closet (*Evans* v. *Gornall* (1891), 8 T. L. R. 620).

(*z*) See also 26 & 27 Vict. c. 93, ss. 16—20, *post*, p. 1491.

(*a*) See the Gasworks Clauses Act, 1847, s. 21, *ante*, p. 1400, and the note thereto; and the P. H. A., 1875, s. 68, *ante*, p. 143.

sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Power to open ground and examine gas pipes, to ascertain whether water is being fouled by gas.

65. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground, and examine the pipes, conduits, and works of the persons making or supplying gas; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes (*b*).

Expenses to abide the result of the examination.

66. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination.

Recovery of expenses.

67. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered.

Water rates.

And with respect to the payment and recovery of the water rates, be it enacted as follows:

Rates to be recoverable from person supplied with water.

68. The water rates, except as hereinafter (*c*) and in the special Act mentioned, shall be paid by and be recoverable from the person requiring, receiving or using the supply of water, and shall be payable according to the annual value of the tenements (*d*) supplied with water, and if any dispute arise as to such value the same shall be determined by two justices (*e*).

(*b*) See also ss. 28—34, *ante*, pp. 1412—1414.

(*c*) See s. 72, *post*, p. 1425.

(*d*) See *Metropolitan Water Board* v. *Baker* (1910), 74 J. P. 337; 102 L. T. 536; *Metropolitan Water Board* v. *Phillips*, [1913] A. C. 86; 77 J. P. 73.

(*e*) That is, the net annual value. See the P. H. A., 1875, s. 56, *ante*, p. 128. Annual value, according to the P. H. A., 1875, s. 56, means *net* annual value as defined by s. 4 of that Act, *ante*, p. 15. While, therefore, the decisions upon the meaning of the term "annual value" are of no importance with regard to water rates made by local authorities under the P. H. A., 1875, they are useful in construing local Acts, and some of them deal with points which may arise even where the rates are made by local authorities. They are, therefore, set out here.

By their local Act, 16 Vict. c. xxii., s. 79, the plaintiffs were bound to supply the houses within a certain district with water "at the following rate per annum, that is to say, where the rent" of such dwelling-houses should not amount to £7 per annum, at a rate not exceeding 6 per cent. per annum on such *rent*, but not exceeding 7*s*. 2*d*. per annum; and so on in a graduated scale. The defendant was owner of several small houses supplied with water by the plaintiffs, in respect of which he paid, either under statutory obligation or by voluntary agreement, the poor rate, water rate, and district rate. It was held that "rent" in s. 79 was equivalent to "annual value," and that in estimating the rent on

Where several houses are supplied by one pipe, each shall pay as if separately supplied.

69. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners

which the water rate was payable, the defendant was entitled to deduct the water rates so paid by him (*Sheffield Waterworks Co.* v. *Bennett* (1872), L. R. 7 Ex. 409).

By s. 56 of the New River Company's Act, 1852, which incorporates the Waterworks Clauses Act, 1847, it is enacted that "nothing in this Act or in any Act incorporated herewith contained shall prevent the company from recovering any sum of money not exceeding £50, which shall be due to them for water rates or rents, or for damages, costs or expenses, by action or proceeding in such manner as is by law provided for the recovery of debts not exceeding £50." It was held that where a bonâ fide dispute arises as to the annual value, the company must, before they can sue for the rate, obtain a decision of justices in that dispute under s. 68 of the Act of 1847, *supra* (*New River Co.* v. *Mather* (1875), L. R. 10 C. P. 442; 39 J. P. 614).

By the special Act of a water company which incorporated the Waterworks Clauses Act, 1847, save so far as the clauses or provisions thereof were expressly varied or excepted, the company were obliged to supply water to the occupiers of dwelling houses for domestic purposes at a rate not exceeding £6 per cent. per annum upon the annual "rack-rent or value" of the premises supplied. It was further provided by a subsequent section of the Act that the rate should be "payable according to the annual value at which the premises were from time to time assessed to the poor rate if the same were so assessed, or, if not, according to the net annual value of the premises." It was held that the water rate charged by the company must be calculated on the "rateable value," not on the "gross estimated rental" of the premises supplied with water (*Warrington Waterworks Co.* v. *Longshaw* (1882), 9 Q. B. D. 145; 46 J. P. 773).

It was provided by a local Act that the charge to be made for the supply of water for domestic use should be at a rate varying according to the "annual rent" of the premises supplied. The appellant was the owner of certain houses supplied with water by the respondents under the Act. The houses were let at weekly rents, the appellant paying all rates charged thereon, and also for all repairs and insurances in respect thereof. He was allowed as an owner, under the Poor Rate Assessment and Collection Act, 1869, s. 4, a reduction of 30 per cent. from the full amount of the poor rate which an occupier if rated would have paid. The respondents charged the appellant with water rates calculated on the following basis: They multiplied the weekly rents by fifty-two and deducted from the amount the actual sums paid by the appellant for rates and then charged the water rates upon the balance. It was held that in order to arrive at the "annual rent" upon which the water rate was to be computed, an allowance should be made in respect of "voids," *i.e.*, houses lying vacant from time to time; and that the actual amount of the poor rates and other rates paid by the appellant was rightly deducted, but that the appellant was not entitled to deduct the full amount of the rates which an occupier if rated would have paid; nor the amount he paid for repairs and insurances (*Smith* v. *Birmingham Corporation* (1883), 11 Q. B. D. 195; 47 J. P. 645; and see *Dobbs* v. *Grand Junction Waterworks Co., infra*).

A water company by a special Act of 1826 was compellable to supply water to certain dwelling-houses in the metropolis for domestic purposes at certain rates per cent. per annum payable "according to the actual amount of the rent where the same can be ascertained, and where the same cannot be ascertained, according to the actual amount or annual value upon which the assessment to the poor's rate is computed in the parish or district where the house is situated." By a special Act of 1852, the company were compelled to furnish water "where the annual value of the dwelling-house or other place supplied shall not exceed £200 at a rate per cent. per annum on such value not exceeding £3." The occupier of one of the houses was lessee for a long term at a ground rent, and paid no rent except the ground rent:—*Held*, reversing the decision of the Court of Appeal, that whether the later Act repealed the provisions of the former Act or not the case must be dealt with under the later Act; and that the words "annual value" in the later Act meant "net annual value" as defined in the Parochial Assessments Act, 1836, s. 1:—*Held* also, that "annual value" had the same meaning in the earlier as in the later Act (*Dobbs* v. *Grand Junction Waterworks Co.* (1884), 9 App. Cas. 49; 48 J. P. 5). See also *Northampton Corporation* v. *Ellen*, [1904] 1 K. B. 299; 68 J. P. 197.

By the special Act of a water company it was provided that water should be supplied for domestic purposes by the company at a rate per cent. upon the annual value of the dwelling-house or other place supplied, that a supply of water for domestic purposes should not include a supply of water for, among other things, any trade or manufacture, or business requiring an extra supply of water, and that the company might furnish water for other than domestic purposes on such terms as might be agreed on between the company and the consumer. The company supplied water for domestic purposes to a house occupied as a licensed public house. The company contended that the annual value of the premises as a licensed public house should be taken as the basis of the water rate payable in respect of such supply, and that therefore the fact of the premises being licensed, and a premium

or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

which had been paid for the lease of the premises as a public house ought to be taken into consideration in fixing the value. The occupier contended that such water rate should be based upon the value of the premises for domestic purposes only. It was held that the contention of the company was correct (*West Middlesex Waterworks Co.* v. *Coleman* (1885), 14 Q. B. D. 529; 49 J. P. 341).

Section 68 of the Bristol Waterworks Act, 1862, enacts that the company shall furnish to every occupier of a private dwelling-house within their limits a sufficient supply of water for the domestic use of such occupier, at certain annual rents or rates, according to the "annual rack-rent or value of the premises so supplied," such supply (by s. 71) not to include, amongst other things, a supply of water "for watering gardens by means of a tap, tube, pipe, or other such like apparatus." And s. 32 of the Bristol Waterworks Amendment Act, 1865, enacts that "if any dispute shall arise as to the amount of the annual rent or value of any dwelling-house or premises supplied with water by the company, such dispute shall be decided by two justices: provided that the amount of the annual rack-rent or value to be fixed by such justices shall not be less than the gross sum assessed to the poor rate or less than the sum actually paid for such dwelling-house or premises." A dwelling-house and garden in the occupation of the owner were assessed to the poor rate as follows: "Gross estimated rental £240"; "Rateable value, £204." It was proved that the value of the house without the garden would be 10 per cent. less, and that the owner contracted to pay, and did pay £1 1*s.* annually for the watering by means of a pipe and a tap in the garden which surrounded the dwelling-house, and was occupied and assessed therewith:—*Held*, by Mathew and Smith, JJ., upon a case stated by the justices that the words "gross sum assessed to the poor rate," meant the "gross estimated rental," and not "rateable or net value"; and that the water rent was chargeable upon the gross estimated rental of "the premises," including the pleasure garden occupied with the house, and not merely the dwelling-house itself, the extra charge for the garden supply being for using a pipe and a tap (*Bristol Waterworks Co.* v. *Uren* (1885), 15 Q. B. D. 637; 49 J. P. 564). See *Grand Junction Waterworks Co.* v. *Davies*, *post*, p. 1424.

The owner of three cottages let them at weekly rents to separate tenants and paid all rates including water rates. By s. 32 of a special Act the water board were to supply water at the rates specified, that is to say, "where the annual rack-rent or value shall not exceed twenty pounds at a rate per cent. per annum not exceeding ten pounds." It was held that the owner was entitled to deduct the general district rate, the poor rate and the water rate from the gross rent of the cottages so as to arrive at the "annual rack-rent or value" on which the water rate was to be assessed (*Wilkinson* v. *Bury Water Board* (1905), 69 J. P. 214; 92 L. T. 417).

Where a dispute had arisen as to the amount of the water rate payable by an occupier of premises to a water company (whose special Act incorporated the Waterworks Clauses Act, 1847), it was held that the determination of the annual value of the premises supplied, by two justices, under s. 68 of the Act of 1847, was a condition precedent to the right of the occupier to sue the company for cutting off the water, and for the amount alleged to have been paid in excess (*Whiting* v. *East London Waterworks Co.* (1884), 1 C. & E. 331).

A local waterworks Act empowered a company to distrain for water rates for an agreed amount. A later Act limited the rates to such sums as should be "reasonable." Under the Waterworks Clauses Act, 1847, which incorporates 8 & 9 Vict. c. 20, s. 140, water rates under £20 are to be recovered by means of a distress warrant issued by justices. A third Act of the company in 1852 incorporated the Waterworks Clauses Act, but expressly preserved the powers conferred by the former Acts. It was held that the right of the company to levy their own distress was kept alive by the saving clause in the Act of 1852, and that the distress by justices' warrant was additional to, and not in substitution for, the company's original remedy (*Richards* v. *West Middlesex Waterworks Co.* (1885), 15 Q. B. D. 660; 49 J. P. 631).

Although the statutory remedy provided by s. 68 of the Waterworks Clauses Act, 1847, for the settlement by two justices of disputes as to the annual value of a tenement supplied by water, and the special remedy by penalties given by s. 43 against a company for withholding water, have not ousted the general jurisdiction to restrain the company by injunction from cutting off the supply of water pending proceedings for settling a dispute as to value, such injunction will not be granted on the application of an owner or occupier who will not undertake to commence proceedings with due speed before the justices under s. 68 (*Hayward* v. *East London Waterworks Co.* (1885), 28 Ch. D. 138; 49 J. P. 452).

Upon the hearing of a summons to enforce payment of a water rate, the justices have power under the above section to determine a dispute as to the annual value of the premises

Rates to be paid quarterly in advance.

70. The rates shall be paid in advance (*f*) by equal quarterly payments in England . . at Christmas Day, Lady Day, Midsummer Day, and Michaelmas Day, . . . and the first payment shall be made at the time

rated. It is not necessary to their jurisdiction before making an order for payment of the rate upon such summons that the dispute should have been previously determined in a separate proceeding before justices (*Lea* v. *Abergavenny Improvement Commissioners* (1886), 16 Q. B. D. 18; 50 J. P. 165).

Where water rates had been paid for a number of years without objection it was held that the excess which had been charged in respect of an annual value beyond that prescribed in the section could not be recovered back (*Henderson* v. *Folkestone Waterworks Co.* (1884), 1 T. L. R. 329).

So where water rate had been paid on gross value instead of net value in ignorance of the fact that the former was a wrong basis, it was held that the excess could not be recovered (*Slater* v. *Burnley Corporation* (1889), 53 J. P. 70). And see *Stanley* v. *Nuneaton Corporation* (1913), 77 J. P. 349; 108 L. T. 986.

Where a water company was authorised by their special Act to charge at agreed rates for water supplied for purposes other than domestic, it was held that they were not by implication prohibited from entering into agreements for the supply of water for domestic purposes at agreed rates (*Southwark and Vauxhall Waterworks Co.* v. *Dickenson* (1888), 5 T. L. R. 251).

The Barnet Gas and Water Act, 1872 (with which is incorporated the Waterworks Clauses Act, 1847), provides (*inter alia*): "Section 56. The company . . . shall furnish . . . a sufficient supply of water . . . at any rate, on the actual rack-rental of the house or part of a house or premises supplied if the same be let at rack-rent, and on the annual value if, and while, the same is not let at rack-rent, not exceeding" (so much):—*Held*, that "the annual rack-rent" means the same as "the annual value," and does not mean "net annual value" (*Stevens* v. *Barnet District Gas and Water Co.* (1888), 57 L. J. M. C. 224; 52 J. P. 276).

By 1 & 2 Geo. 4, c. cxiv., s. 8, the churchwardens of a parish were required to make a rate "on the full annual rent or value" of all houses rateable to the relief of the poor:—*Held*, that the full annual rent or value meant the full annual net value and that the rate could not be made on the gross estimated rental (*Rose* v. *Watson*, [1894] 2 Q. B. 90; 58 J. P. 589).

In determining the annual value of a residential tenement under s. 68 of the Waterworks Clauses Act, 1847, for the purposes of water supply to the dwelling-house for domestic purposes only, it is not competent to justices to exclude a portion of the garden occupied and enjoyed with the dwelling-house. The section contemplates the valuation of the existing tenement as the owner and occupier choose to enjoy it (*Grand Junction Waterworks Co.* v. *Davies*, [1897] 2 Q. B. 209; 61 J. P. 484).

If a statute which authorises a water company to charge its consumers with a water rate is ambiguous with regard to the amount of the rate to be charged or the mode of assessing it, it must be construed in favour of the consumer and against the company (*South Staffordshire Waterworks Co.* v. *Barrow* (1897), 61 J. P. 661).

Where an owner was entitled by statute to a supply at a reduced rate by reason of his house standing on a particular estate, but he had for many years paid the full rate in ignorance that his house stood on that estate, he was held entitled to recover back the over-payments (*Meadows* v. *Grand Junction Waterworks Co.* (1905), 69 J. P. 255; 21 T. L. R. 538).

A water company, before the Education Act, 1902, came into operation supplied water by meter to the managers of a voluntary public elementary school for the non-domestic purposes of the school buildings, and continued to supply them after the Act of 1902 came into force. There was no written contract. The company continued, as they had done before the Act, to send the demand note for payment for the water supplied to the managers, who included the charges in their quarterly accounts of expenditure sent by them to the local education authority who paid the amount direct to the company. The company sent the receipts to the local education authority. The local education authority having made default in the payments, the company brought an action against them for water supplied. It was held by the Divisional Court that the local education authority had power to enter into a contract for the supply of water necessary for the maintenance of the school, and that there was evidence upon which the county court judge might properly find that they had in fact entered into such a contract with the company (*Trowbridge Water Co.* v. *Wilts C. C.*, [1909] 1 K. B. 824; 73 J. P. 280). See also the cases of *Metropolitan Water Board* v. *Baker* (1910), 74 J. P. 337; 102 L. T. 536, and *Metropolitan Water Board* v. *Phillips*, [1913] A. C. 86; 77 J. P. 73, decided under the Metropolitan Water Board (Charges) Act, 1907, s. 8.

(*f*) Therefore no demand is necessary before proceedings for recovery (*East London Waterworks Co.* v. *Kyffyn*, [1895] 1 Q. B. 55; 59 J. P. 405). But see, *per* ALVERSTONE, L.C.J., in *Elliott* v. *Russell*, [1902] 2 K. B., at p. 754; 67 J. P. 158.

when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made (*g*).

Parties giving notice to discontinue use of water, or removing, to pay to the next quarter day.

71. The occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.

Owners of houses not exceeding £10 rent to be liable to water rates.

72. The owners of all dwelling-houses or parts of dwelling-houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements (*h*); and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement (*k*).

Sums paid by owner recoverable as rent from tenant.

73. Provided always, that when any owner shall pay any such rate in respect of any such dwelling-house or part of a dwelling-house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it have been agreed that the owner shall pay the water rates in respect of such dwelling-house or part of a dwelling-house (*l*); and every such sum of money

(*g*) Words relating to Scotland and Ireland only are omitted from this section.

(*h*) The respondents, relying on s. 58 of their private Act (15 & 16 Vict. c. clviii.), which extended the provisions of s. 72 of the Waterworks Clauses Act, 1847, to houses not exceeding the annual value of £20, claimed water rates from the appellants, as owners of certain houses under the annual value of £20 each, for two quarters, during the whole of which time such houses were unoccupied:—*Held*, that an owner's liability for rates under s. 72 of the Waterworks Clauses Act, 1847, ceases on the quarterly day of payment next after the house has become unoccupied, and that as s. 58 of the respondents' private Act merely extended the provisions of that section to houses not exceeding the annual value of £20, the respondents were not entitled to recover (*British Empire Mutual Life Assurance Co.* v. *Southwark and Vauxhall Water Co.* (1895), 59 J. P. 758; 59 L. T. 321). When a house is unoccupied at the beginning of a quarter, and becomes occupied in the course of that quarter, the water rate is payable only for that portion of the quarter during which the house is occupied, although the company had no notice of the non-occupation, and continued to supply water (*East London Waterworks Co.* v. *Foulkes*, [1894] 1 Q. B. 819; 58 J. P. 384). Where upon adjudication the trustee in bankruptcy takes possession of the debtor's premises, and carries on therein the business with a view to selling it as a going concern, he is in the position of an "incoming tenant" within s. 48 of the Metropolis Water Act, 1871, and is not liable for arrears of water rate left unpaid by the debtor; and if he has paid such arrears under protest he is entitled to recover them back (*Re Flack, Ex parte Berry*, [1900] 2 Q. B. 32).

It is sufficient to prove that the rateable value as settled by the local authority does not exceed the maximum sum under which the owner is liable (*Metropolitan Water Board* v. *Streeton* (1910), 74 J. P. 180; 102 L. T. 220).

(*k*) Where the premises were mortgaged and a receiver was appointed, the mortgagor appointed another person to collect the rents. The collector handed over the rents intact, at first to the mortgagor and subsequently to the receiver. It was held that the collector and not the receiver was the person liable under a section of a special Act substantially identical with the text, to pay the water rate (*Metropolitan Water Board* v. *Brooks*, [1911] 1 K. B. 289; 75 J. P. 41).

(*l*) Under a covenant by a lessor to pay all water rates imposed or assessed upon the premises, or on the lessor or lessee in respect thereof, the lessor is not bound to pay for

payable by the tenant to the owner, under the provision hereinbefore contained, may be recovered, if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

If rates are not paid, water may be cut off, and rates and expenses recovered.

74. If any person supplied with water by the undertakers, or liable (*m*) as herein or in the special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water, and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act; or if the rate so due amount to twenty pounds or upwards, the undertakers may recover the same, with the expenses of cutting off the water, by action in any court of competent jurisdiction (*n*).

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THE TOWNS IMPROVEMENT CLAUSES ACT, 1847.

(10 & 11 VICT. c. 34). (*o*)

An Act for consolidating in one Act certain Provisions usually contained in Acts for Paving, Draining, Cleansing, Lighting, and Improving Towns.

[21st June 1847.]

Incorporation of this Act with special Act.

[1.] This Act shall extend only to such towns or districts in England or Ireland as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted

water supplied to the lessee for trade purposes (*Floyd* v. *Lyons & Co.*, [1897] 1 Ch. 633). But under a covenant to pay all rates and taxes payable in respect of the demised premises a lessor is bound to pay water rate for water supplied for domestic purposes (*Bourne and Tant* v. *Salmon and Gluckstein*, [1907] 1 Ch. 616; 71 J. P. 329; *Drieselman* v. *Winstanley* (1909), 53 Sol. Jo. 631).

(*m*) *I.e.*, liable at the time the water rate became due. Provided that there was at that date an occupier other than the owner and that the owner and not the occupier was liable for the payment of the rate, s. 4 of the Water Companies (Regulation of Powers) Act, 1887, prohibits the water company from cutting off the supply for non-payment of the rate even after the occupier has given up possession and the premises have become vacant (*Metropolitan Water Board* v. *Bibby*, [1911] 2 K. B. 74; 75 J. P. 322).

(*n*) See also 26 & 27 Vict. c. 93, s. 21, *post*, p. 1493. See *Sheffield Waterworks Co.* v. *Wilkinson*, *ante*, p. 1418. With reference to the particular mode of recovering the rates here prescribed, it may be stated that damages not specially provided for are by s. 85 recoverable under the sections of the Railways Clauses Act, 1845, *ante*, p. 1369. In such case the claim of a water company for arrears of rates is a complaint within s. 11 of the S. J. A., 1848, and the summons must be issued within six months from the date when the rate was due and demanded (*East London Waterworks Co.* v. *Charles*, [1894] 2 Q. B. 730; see, *per* WILLS, J., in *Elliott* v. *Russell*, [1902] 2 K. B., at p. 755; 67 J. P. 158). The limitation of six months imposed in respect of summary proceedings does not apply to proceedings in the county court when both remedies are open to the company (*Metropolitan Water Board* v. *Bunn*, [1913] 3 K. B. 181; 77 J. P. 353). The rates being payable quarterly in advance no demand is necessary (*East London Waterworks Co.* v. *Kyffyn*, *ante*, p. 1424; but see, *per* ALVERSTONE, L.C.J., in *Elliott* v. *Russell*, [1902] 2 K. B., at 754; 67 J. P. 158). Water rates made by an urban authority will, however, be recoverable by summary proceedings under s. 256 of the P. H. A., 1875, *ante*, p. 562.

See, as to the right to cut off the water when the rates are payable by the owner, 50 & 51 Vict. c. 21, s. 4, and the notes thereto, *post*, p. 1793.

It is not a condition precedent to the right to recover the rate that the power of cutting off the water should first have been exercised (*R.* v. *Hutton*, [1907] 2 K. B. 578; 71 J. P. 424.

As to the discretion of the justices in respect of costs, see *Ruabon Water Co.* v. *Evans* (1906), 22 T. L. R. 541.

(*o*) Incorporated by the P. H. A., 1875, s. 160, *ante*, p. 361, and s. 169, *ante*, p. 388.

by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows: *Interpretation.*

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district, or of any class of towns or districts, defined or comprised therein, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers of executing the purposes thereof. "The special Act." "Prescribed." "The commissioners."

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,) Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number: Number.

Words importing the masculine gender shall include females: Gender.

The word "person" shall include a corporation, whether aggregate or sole: "Person."

The word "lands" shall include messuages, lands, tenements, and hereditaments, of any tenure: "Lands."

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare, within the limits of the special Act: "Street."

The word "month" shall mean calendar month: "Month."

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster . . . "Superior courts."

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath."

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town: "County."

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together: "Justice." "Two justices."

The expression "quarter sessions" shall mean quarter session as defined in the special Act, and if such expression be not there defined shall mean the court of general or quarter sessions of the peace which shall be held in or at the place nearest to the district in which the matter arises "Quarter sessions."

requiring the cognizance of any such court, and having jurisdiction over such district:

"Owner."

The word "owner" used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special Act shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rack-rent, would be entitled to receive, the rack-rent from the occupier thereof:

"Cattle."

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

Citing the Act.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Towns Improvement Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Acts.

5. For the purposes of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

Naming streets.

And with respect to naming the streets and numbering the houses, be it enacted as follows (*p*):

Houses to be numbered and streets named.

64. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place, at or near each end, corner, or entrance of every such street, the name by which such street is to be known (*q*); and every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding forty shillings for every such offence (*r*).

Numbers of houses to be renewed by occupiers.

65. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings, and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages (*r*).

(*p*) These clauses are incorporated with the P. H. A., 1875, by s. 160, *ante*, p. 361. See also notes to that section.

(*q*) This gives the local authority no power to change the names of streets, and if the proposed change is likely to be injurious to the owners or occupiers of houses in the street, the local authority may be restrained from making it (*Anderson* v. *Dublin Corporation* (1884), 15 L. R. Ir. 510). But although the local authority have approved of plans for a new street, giving it a name, they may afterwards, when the street is actually laid out, give it another name (*Collins* v. *Hornsey U. D. C.*, [1901] 2 K. B. 180; 65 J. P. 606). See also on the subject of altering the names of streets, s. 21 of the P. H. A., 1907.

It is not a violation of any legal right of the owner of a house for the owner of another house to call it by the same name. There is no legal right to the exclusive use of any particular name for a particular house (*Day* v. *Brownrigg* (1879), 10 Ch. D. 294).

(*r*) As to the recovery of this penalty, see s. 316 of the P. H. A., 1875, *ante*, p. 649. The

Improving streets.

And with respect to improving the line of the streets, and removing obstructions, be it enacted as follows (*s*) :

Houses may be set forward for improving line of street.

66. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated (*t*).

Commissioners may purchase lands for widening streets, etc. and sell the parts not wanted.

67. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall resell any parts of the land so purchased which shall not be wanted for the enlargement of the street (*u*).

Houses projecting beyond line of street, when taken down, to be set back.

68. When any house or building, any part of which projects beyond the regular line of the street (*v*), or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or towards the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains (*x*).

numbers must be provided at the expense of the occupiers, and there is no legal authority for charging them to the rates.

(*s*) See note (*p*) *ante*, p. 1428.

(*t*) The word *street* is here used in its popular acceptation of a line of buildings, and does not include a highway generally. This section gives no power to divert a highway, not being a street; that can only be done under the Highway Acts (*R.* v. *Platts* (1880), 49 L. J. Q. B. 848; 44 J. P. 765); or under Inclosure Acts, as in *Hornby* v. *Sylvester* (1888), 20 Q. B. D. 797; 52 J. P. 468. See also s. 155 of the P. H. A., 1875, *ante*, p. 320, and notes thereto.

(*u*) A similar power is conferred upon urban authorities by s. 154 of the P. H. A., 1875, *ante*, p. 318. See also s. 175 of that Act as to the disposal of surplus lands, *ante*, p. 410.

(*v*) This does not mean a strict mathematical line, but a substantially regular line (*Tear* v. *Freebody*, *ante*, p. 321). No general line of buildings may exist in some cases. See *Ecclesiastical Commissioners* v. *St. James, Clerkenwell* (1861), 7 Jur. (n.s.) 326. *Tear* v. *Freebody* was explained by Willes, J., in *Simpson* v. *Smith*, *infra*; and see *Lord Manners* v. *Johnson* (1875), 1 Ch. D. 673. When houses project and are pulled down, and the land sold for building purposes, new houses may be built on the same line as before, unless compensation be given. In determining the general line, therefore, regard ought to be had to the frontage of houses previously existing, and which may be rebuilt, as well as those still standing (*Lord Auckland* v. *Westminster Board of Works* (1872), L. R. 7 Ch. 597).

As to the right of an adjoining owner to sue in respect of a building erected contrary to this section, see *Brooks* v. *Terry* (1888), 4 T. L. R. 678.

As to the determination of the general line of buildings in the metropolis, see *St. George, Hanover Square* v. *Sparrow* (1864), 16 C. B. (n.s.) 209; *Bauman* v. *St. Pancras Vestry* (1867), L. R. 2 Q. B. 528; *Wandsworth Board of Works* v. *Hall* (1869), L. R. 4 C. P. 85; *Simpson* v. *Smith* (1871), L. R. 6 C. P. 87; *Lord Auckland* v. *Westminster Board of Works*, *supra*; *Paddington Vestry* v. *Snow* (1882), 46 J. P. 87; 45 L. T. 476; *Barlow* v. *Kensington Vestry* (1885), 11 App. Cas. 257; 50 J. P. 691; *Plumstead Board of Works* v. *Spackman* (1884), 10 App. Cas. 229; 49 J. P. 132; *St. Mary, Islington, Vestry* v. *Goodman* (1889), 23 Q. B. D. 154; *Fortescue* v. *St. Matthew, Bethnal Green, Vestry*, [1891] 2 Q. B. 170; 53 J. P. 758; *London C. C.* v. *Cross* (1891), 66 L. T. 731; *Allen* v. *London C. C.*, [1895] 2 Q. B. 587; 59 J. P. 644; *Lavy* v. *London C. C.*, [1895] 2 Q. B. D. 577; 59 J. P. 630; *London C. C.* v. *Pryor*, [1896] 1 Q. B. 468; 60 J. P. 292; *S. E. & C. Rail. Co.* v. *London C. C.*, [1907] 2 K. B. 91; 71 J. P. 260; *London C. C.* v. *Metropolitan Rail. Co.* (1907), 71 J. P. 372; *Re Lilley and Skinner* (1907), 71 J. P. 437; *Scott* v. *Carritt* (1900), 82 L. T. 67; *Lilley* v. *London C. C.*, [1910] A. C. 1; 73 J. P. 297; *Rea* v. *London C. C.*, [1911] 1 K. B. 640; 75 J. P. 261; *Fleming* v. *London C. C.* (1909), 72 J. P. 519; *London C. C.* v. *Coal Co-operative Society, Ltd.* (1909), 72 J. P. 68; *London C. C.* v. *Metropolitan Rail. Co.*, [1909] 2 K. B. 317; 73 J. P. 339; *Fleming* v. *London C. C.*, [1911] A. C. 1; 75 J. P. 9; *A. & F. Pears, Ltd.* v. *London C. C.* (1911), 75 J. P. 461; *Clode* v. *London C. C.*, 78 J. P. (Jo.) 185.

(*x*) See also the P. H. A., 1875, s. 155, *ante*, p. 320, and the notes thereto.

Future projections of houses, etc. to be removed on notice.

69. The commissioners may give notice to the occupier (*y*) of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, or fence, or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street; and such occupier shall, within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building (*z*).

(*y*) Or *owner*. See the P. H. A., 1875, s. 160, *ante*, p. 361.

The local authority are not obliged to give notice to the owner or occupier before passing a resolution to send him notice to remove a projection, but if he objects to their order, his proper course is to apply to the local authority to be heard and lay his objections before them (*Att.-Gen.* v. *Hooper*, [1893] 3 Ch. 483; 57 J. P. 564).

(*z*) As to area railings, see *Bouverie* v. *Miles* (1830), 1 B. & Ad. 38; *Barker* v. *Herbert, infra;* as to a projecting shop front, see *R.* v. *Ingham* (1852), 17 Q. B. 884. As to a projecting porch, see *Gordon* v. *St. Mary Abbotts Vestry*, [1894] 2 Q. B. 742; *Coburg Hotel Co.* v. *London C. C.* (1899), 63 J. P. 805; 81 L. T. 450; as to a show-case on the footway, *Openshaw* v. *Pickering* (1913), 77 J. P. 27. A corresponding section of the Metropolis Management Act, 1855, was held not to justify the removal of a shed and seats erected by a publican upon a piece of ground between the footway and the roadway, the intervening space being found not to be part of the street, and the shed and seats not being against or in front of any house (*Le Neve* v. *Mile End Old Town Vestry*, *ante*, p. 19). And see *Hoare* v. *Lewisham Borough Council* (1903), 67 J. P. 20; 87 L. T. 464. A shopkeeper placed goods on the pavement in front of his shop for sale, and was summoned under s. 28 of the Towns Police Clauses Act, 1847. He contended that he bonâ fide claimed the right to put the goods there, and the justices considered that their jurisdiction was ousted, but stated a case:—*Held*, that the justices ought to determine whether the land on which the goods were placed was part of the highway or not; and that unless the defendant established a restricted dedication no question as to a claim of right arose (*Leicester Urban Sanitary Authority* v. *Holland* (1888), 57 L. J. M. C. 75; 52 J. P. 788). As to proof of dedication of embayments adjoining the foot pavement, see *Piggott* v. *Goldstraw* (1901), 65 J. P. 259. As to a dedication of a street subject to existing obstructions or projections, see *Fisher* v. *Prowse; Cooper* v. *Walker* (1862), 26 J. P. 613; 2 B. & S. 770, where such dedication was held to be an answer in actions for accidents caused by cellar flaps and projecting doorsteps. It is a good defence that the footway was dedicated to the public subject to the right of the defendant to commit the acts of obstruction complained of, and such defence if raised bonâ fide ousts the jurisdiction of the justices. The evidence, however, to establish such a defence should be of a cogent character (*R.* (*Christie*) v. *Londonderry JJ.*, [1902] 2 I. R. 266). And see *R.* (*Kennedy*) v. *Cork County JJ.* (1911), 45 Ir. L. T. 217. As to projections existing before the passing of the local Act, see *Wilson* v. *Cunliffe* (1874), 38 J. P. 231; 29 L. T. 913; *Whittaker* v. *Rhodes* (1881), 46 J. P. 182. As to the liability of the occupier for accidents caused by projections, see *Tarry* v. *Ashton* (1876), 1 Q. B. D. 314; 40 J. P. 439; *Watson* v. *Ellis* (1884), 1 T. L. R. 317, where the plaintiff tripped over a carpet laid across a pavement to a carriage; *De Tyron* v. *Waring* (1884), 1 T. L. R. 414; *Hoare* v. *Kearley* (1884), 1 T. L. R. 426; *Strube* v. *Southwark and Vauxhall Waterworks Co.* (1888), 53 J. P. 424; 5 T. L. R. 638, where the plaintiff fell in consequence of having put his staff into a stop-cock box negligently left uncovered in the road; *Braithwaite* v. *Watson* (1888), 5 T. L. R. 331, where the plaintiff was injured by reason of a coal-cellar plate in the pavement being insecurely fastened; *Stiefsohn* v. *Brooke* (1889), 53 J. P. 790; 5 T. L. R. 684, where the plaintiff was injured by a lift inside an aperture adjoining the highway; *Barker* v. *Herbert*, [1911] 2 K. B. 633; 75 J. P. 481, where a child was injured when climbing on defective railings. As to overhead wires, see *Wandsworth Board of Works* v. *United Telephone Co.* (1884), 13 Q. B. D. 904; 48 J. P. 676.

It will be for the magistrate to decide whether the thing complained of is an obstruction to the passage. See *Gabriel* v. *St. James's, Westminster* (1859), 23 J. P. 372, where the court intimated that this could be decided without calling a person to prove he had been

70. If any such obstructions or projections were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed or altered as they think fit (*a*) ; provided that they give notice of such intended removal or alteration to the occupier (*b*) of the house or building against or in front of which such obstruction or projection shall be thirty days before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Commissioners may cause existing projections to be removed, on giving notice and making compensation.

71. All doors, gates, and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed ; and if, except as aforesaid, any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier (*b*) of such house, building, yard, or land shall, within eight days after notice from the commissioners to that effect, cause the same to be altered so as not to open outwards ; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier (*b*), and shall be recoverable from him as damages (*c*), and he shall, in addition, be liable to a penalty not exceeding forty shillings.

Doors, etc. in future not to be made to open outwards, except when so allowed in case of public buildings.

72. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

Existing doors, etc. opening outwards may be altered.

73. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance to any vault or cellar, a door or covering shall be made by the occupier (*b*) of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar ; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

Coverings for cellar doors to be made by occupiers.

actually obstructed. This was also decided in *Read* v. *Perrett* (1876), 1 Ex. D. 349; 41 J. P. 135. But see *Hill* v. *Somerset* (1887), 51 J. P. 356. A projection consisting of an oriel window, the lowest part of which is fifteen feet above the pavement, is not an obstruction. See *Goldstraw* v. *Duckworth* (1880), 5 Q. B. D. 275 ; 44 J. P. 410. In the Scotch case of *McMillan* v. *Bennett* (1895), 22 Ct. of Sess. Cas. (4th ser.) (J.C.) 23, the appellant, a bill poster, was convicted under s. 381 of the Burgh Police (Scotland) Act, 1892, for affixing a projecting advertising board to a building without the consent of the burgh commissioners. The building in question was the back wall of a workshop, on which the appellant fixed a board or wooden lining on which to post his bills, that board being about 102 feet long, 7 feet 6 inches high, and (taking into account the straps to which the board was affixed) it projected from the wall to the extent of $1\frac{3}{4}$ inches. Section 159 of the Act was in much the same terms as this section :—*Held*, following *Goldstraw* v. *Duckworth*, *ante*, that it was not a projecting advertising board in the sense of the statute, which was intended to strike only at such projections as constituted an obstruction to the free passage of the street. See also *Hull* v. *London C. C.*, [1901] 1 K. B. 580 ; 65 J. P. 309 ; *Winsborrow* v. *London Joint Stock Bank* (1903), 67 J. P. 289 ; 88 L. T. 803 ; *London C. C.* v. *Illuminated Advertisements Co.*, [1904] 2 K. B. 886 ; 68 J. P. 445 ; *London C. C.* v. *Schewzik*, [1905] 2 K. B. 695 ; 69 J. P. 409 ; *London C. C.* v. *Hancock and James*, [1907] 2 K. B. 45 ; 71 J. P. 268 ; *R.* v. *Denman* (1907), 71 J. P. 279; 96 L. T. 672.

Apart from statute there may be a legal easement to have a projection such as a signboard affixed to the wall of an adjoining house. See *Moody* v. *Steggles* (1879), 12 Ch. D. 261.

(*a*) See *Bagshaw* v. *Buxton L. B.*, *ante*, p. 261.

(*b*) Or *owner*. See the P. H. A., 1875, s. 160, *ante*, p. 361.

(*c*) See the P. H. A., 1875, s. 160, *ante*, p. 361, as to the recovery of these costs from the owner, and the deduction of them from the rent, as in the case of private improvement rates.

Water spouts to be affixed to houses or buildings.

74. The occupier (*d*) of every house or building in, adjoining, or near to any street shall, within seven days next after service of an order of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath; and in default of compliance with any such order within the period aforesaid, such occupier shall be liable to a penalty not exceeding forty shillings for every day that he shall so make default.

Ruinous or dangerous buildings.

And with respect to ruinous or dangerous buildings (*e*), be it enacted as follows:

Ruinous or dangerous buildings to be taken down or secured by owners, etc.

75. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers (*f*) or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner (*g*) of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices (*h*), and it shall be lawful for such justices to order the owner, or in his default the occupier (if any),

(*d*) Or *owner*. See the P. H. A., 1875, s. 160, *ante*, p. 361.

(*e*) As to fencing lands adjoining streets, which lands are, owing to the absence or inadequate repair of fences, a source of danger to passengers, see ss. 30 and 31 of the P. H. A., 1907.

(*f*) The similar provisions of s. 73 of the Metropolitan Building Act, 1855, applied to any dangerous structure, notwithstanding that it did not adjoin a public highway (*London C. C.* or *R.* v. *Herring*, [1894] 2 Q. B. 522; 58 J. P. 721). That decision was followed in relation to a structure outside the metropolis, in *Mellor* v. *Warden* (1896), 40 Sol. J. 567. The liability of an owner is not affected by the fact that the London County Council has temporarily shored up the building in pursuance of the London Building Act, 1894, s. 106. In order that a house may be dangerous within the meaning of ss. 103, 106 and 107 (1) of that Act, it is not necessary that it should be dangerous to inmates or to the public passing along the highway. It is sufficient if there is an apprehension of danger or injury to adjoining houses or to their inhabitants, or even to trespassers (*London C. C.* v. *Jones*, [1912] 2 K. B. 504; 76 J. P. 293).

(*g*) See *R.* v. *Lee* (1879), 4 Q. B. D. 75; 43 J. P. 302, where it was held that the incumbent of a church was not the owner so as to render him liable in respect of its dangerous condition. The owner may remain liable under this section though a notice has been served upon him for the purpose of compulsorily taking his buildings under the Artizans and Labourers Dwellings Improvement Act, 1875 (now repealed and replaced by the Housing of the Working Classes Act, 1890) (*Barnet* v. *Metropolitan Board of Works* (1882), 46 J. P. 469; 46 L. T. 384). Although the justices have jurisdiction to inquire who is the owner of the wall in order to ascertain whether the proper notices have been given, that inquiry is one preliminary to the exercise of their jurisdiction, and their decision as to ownership is not conclusive in a subsequent proceeding to recover expenses (*R.* (*Ahern*) v. *Cork Recorder*, [1913] 2 I. R. 35).

(*h*) Compare the provisions of a local Act in *Cheetham* v. *Manchester Corporation* (1875), 39 J. P. 343. The section implies that on the surveyor's complaint a summons must issue.

of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state, within the time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured, in such manner as shall be requisite; and all the expenses (*i*) of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

Levy of expenses by distress.

76. If such owner can be found within the limits of the special Act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly (*j*).

If owner cannot be found within the limits, or distress cannot be made, commissioners may take the house or ground.

77. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the commissioners, after giving twenty-eight days notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building or on the land whereon such building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845 (*k*), in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

8 & 9 Vict. c. 18.

Commissioners may sell the materials for payment of expenses, restoring to the owner the overplus arising from the sale.

78. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building, on

(*i*) The expenses are recoverable, although the matter has never been actually before the local authority but has been entirely in the hands of their surveyor by their general directions to him (*London C. C.* v. *Hobbis* (1897), 61 J. P. 85; 75 L. T. 687). As to the expenses which may be recovered, see *Debenham* v. *Metropolitan Board of Works* (1881), 6 Q. B. D. 112; 45 J. P. 190. They include the expenses of reinstating the pavement (*Crisp* v. *London C. C.*, [1899] 1 Q. B. 720; 63 J. P. 484). As between tenant for life of leaseholds and remainderman these expenses are chargeable against income (*Re Copland's Settlement, Johns* v. *Carden*, [1900] 1 Ch. 326; and see *Re Willis, Willis* v. *Willis*, [1902] 1 Ch. 15). These expenses are "outgoings" within the meaning of a contract for sale (*Tubbs* v. *Wynne*, [1897] 1 Q. B. 74). With regard to the liability as between vendor and purchaser of leaseholds, see *Re Highett and Bird's Contract*, [1903] 1 Ch. 287. Where an owner was required to do work under this section, and he applied to the tenant for leave to enter, who vacated her premises and intimated an intention of surrendering them, and the owner accepted the key and executed the works, thereby rendering occupation impossible, it was held there had been an acceptance of the surrender (*Smith* v. *Roberts*, Times, April 13th, 1892). As to the tenant's liability under an ordinary covenant to repair, see *Lister* v. *Lane*, [1893] 2 Q. B. 212; 57 J. P. 725; *Wright* v. *Lawson* (1904), 68 J. P. 34.

(*j*) These expenses must be recovered within six months from the date of demand. See the cases in the notes to s. 252 of the P. H. A., 1875, *ante*, p. 557. But it is not necessary that three months should elapse between the date of the demand and the commencement of the proceedings for the recovery of the expenses, because s. 257 of the P. H A., 1875, only applies in cases of apportionment (*Usk U. D. C.* v. *Mortimer* (1904), 68 J. P. 38; 90 L. T. 25).

(*k*) Section 18 *et seq.*, *ante*, p. 1326.

demand; nevertheless, the commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

Precautions during repairs.

And with respect to precautions during the construction and repair of the sewers, streets, and houses, be it enacted as follows:

Houses to be protected, and bars to be erected across streets, during repairs.

79. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoreing-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents; and every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners shall for every such offence be liable to a penalty not exceeding five pounds (*l*).

Hoards to be set up during repairs, with footways and lights.

80. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition, to the satisfaction of the commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night; and every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same, when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued (*m*).

(*l*) This section does not mean that the traffic in the street is to be entirely stopped during the execution of the works, but merely that bars and chains or other protection should be placed so as to prevent vehicles and persons from passing over the place where the works are being executed (*Woodall* v. *Nuttall* (1892), 56 J. P. 150; 8 T. L. R. 68).

(*m*) In districts where the P. H. A., 1890, has been adopted, this section has been superseded by s. 34 of that Act, *ante*, p. 850. And where Part II. of the P. H. A., 1907, applies, hoards must, under s. 32 of that Act, be securely fixed to the satisfaction of the local authority under penalties as therein provided. As to the right to erect a hoarding, though it may obstruct a highway to some extent, see *Fisher* v. *Prowse*, *ante*, p. 1430. As to the liability for damages for wrongfully erecting and continuing a hoarding, see *Bradbee* v. *Christ's Hospital* (1842), 4 M. & G. 714; 5 Scott, N. R. 79. As to a case where a licence for a hoarding was required by a local Act, see *R.* v. *Commissioners of Sewers* (1870), 22 L. T. 582; *Barnett* v. *Covell* (1904), 68 J. P. 93; 90 L. T. 29; *Rockleys, Ltd.* v. *Pritchard* (1910), 74 J. P. 11; 101 L. T. 575; *Stockport Corporation* v. *Rollinson* (1910), 74 J. P. 236; 102 L. T. 567. As to the liability for injuries caused by negligently erecting

81. When any building materials, rubbish, or other things are laid, or any hole made, in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising, while such materials or hole remain; and such person shall, at his own expense, cause such materials or other things, and such hole, to be sufficiently fenced and inclosed, until such materials or other things are removed, or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or inclose such materials or other things, or such hole, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued (*n*).

When building materials are deposited in streets, etc. the same shall be lighted at night and fenced.

82. In no case shall any such building materials or other things or such hole be allowed to remain for an unnecessary time, under a penalty not exceeding five pounds to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding forty shillings for every day during which such offence is continued after the conviction for such offence; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Penalty for continuing deposits of building materials or excavations for an unreasonable time.

83. If any building or hole or any other place near any street (*o*) be, for want of sufficient repair, protection, or inclosure, dangerous to the passengers along such street, the commissioners shall cause the same to be repaired, protected, or inclosed, so as to prevent danger therefrom; and the expenses of such repair, protection, or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected, or inclosed, and shall be recoverable from him as damages.

Commissioners to cause dangerous places to be repaired or inclosed.

* * * * *

Slaughter-houses.

And with respect to slaughter-houses, be it enacted as follows (*p*):

125. The commissioners may license (*q*) such slaughter-houses and knackers' yards as they from time to time think proper for slaughtering cattle within the limits of the special Act.

Commissioners may license slaughter-houses, etc.

and keeping a hoarding, see *Hoare* v. *Kearley* (1884), 1 T. L. R. 426. As to rating of hoardings used as advertising stations, see the Advertising Stations (Rating) Act, 1889, and *Chappell* v. *St. Botolph Overseers*, [1892] 1 Q. B. 561; 56 J. P. 310; *Shelley* v. *Dillon* (1892), 30 L. R. Ir. 304; *Burton* v. *St. Giles and St. George's, Bloomsbury*, [1900] 1 Q. B. 89; 64 J. P. 213.

(*n*) In *Fearnley* v. *Ormsby* (1879), 4 C. P. D. 136; 43 J. P. 384, it was held that a surveyor of highways was rightly convicted under s. 72 of the Highway Act, 1835, for leaving materials for the repair of the road without lights and fences at night. As to personal knowledge being necessary for conviction, see *Hardcastle* v. *Bielby*, [1892] 1 Q. B. 709; 56 J. P. 549.

(*o*) A goit running by the side of an ancient public footpath was held not to be a hole or other place within the meaning of these words (*Wilson* v. *Halifax Corporation*, *ante*, p. 280.

Apart from this enactment the occupier of adjoining land is liable to be indicted for a nuisance if he leaves a dangerous excavation adjoining the highway without a fence (*Barnes* v. *Ward* (1850), 9 C. B. 392; 19 L. J. C. P. 195), unless the highway has been dedicated subject to the nuisance (*Robbins* v. *Jones* (1864), 15 C. B. (N.S.) 224; 33 L. J. C. P. 1).

See also s. 31 of the P. H. A., 1907, as to fencing lands adjoining streets.

(*p*) See notes to s. 169 of the P. H. A., 1875, *ante*, p. 388. Where the P. H. A., 1890, has been adopted in any district it will be necessary to bear in mind the provisions of ss. 29—31 of that Act, *ante*, pp. 847, 848, as to the duration of licences, notice of change of occupation of slaughter-houses, and the revocation of licences on conviction for the sale of meat unfit for food.

(*q*) A resolution of a committee, confirmed by the board, was held to be equivalent to a

New slaughter-houses not to be erected without a licence.

126. No place shall be used or occupied as a slaughter-house (*r*) or knacker's yard within the said limits which was not in such use and occupation at the time of the passing of the special Act (*s*), and has so continued ever since, unless and until a licence for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners; and every person who, without having first obtained such licence as aforesaid, uses (*t*) as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding five pounds, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Existing slaughter-houses, etc. to be registered.

127. Every place within the limits of the special Act which shall be used as a slaughter-house or knacker's yard shall, within three months after the passing of such Act, be registered by the owner or occupier thereof, at the office of the commissioners, and on application to the commissioners for that purpose the commissioners shall cause every such slaughter-house or knacker's yard to be registered in a book to be kept by them for that purpose; and every person who after the expiration of the said three months, and after one week's notice of this provision from the commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's yard, without its being so registered, shall be liable to a penalty not exceeding five pounds for such offence, and a penalty not exceeding ten shillings for every day after the first day during which such place shall be used as a slaughter-house or knacker's yard without having been so registered.

Commissioners may make byelaws for regulation of slaughter-houses, etc.

128. The commissioners shall from time to time, by byelaws (*u*), to be made and confirmed in the manner hereinafter provided, make regulations for the licensing, registering, and inspection of the said slaughter-houses and knackers' yards, and preventing cruelty therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in

licence, though not communicated to the grantee (*Howarth* v. *Manchester Corporation* (1862), 6 L. T. 683). A licence for the erection of a slaughter-house is sufficient to authorise its use (*Anthony* v. *Brecon Market Co., infra*).

A knacker's personal licence is provided for under the Knackers Act, 1786, *ante*, p. 1301.

(*r*) This Act does not apply only to places where cattle are slaughtered for human food, as in *Elias* v. *Nightingale* (1858), 22 J. P. 131; 8 El. & Bl. 698.

(*s*) The application of premises for the slaughter of bullocks which had been used for the slaughter of pigs before the Act came into operation does not take the case out of the exception (*Brighton L. B.* v. *Stenning* (1867), 31 J. P. 246; 15 L. T. 567). The enlargement of premises does not destroy their exemption (*Hanman* v. *Adkins* (1876), 40 J. P. 744). The user of premises for pining cattle only, as part of the business of slaughtering, the actual slaughtering taking place elsewhere, is a continuance of user within this section (*Hides* v. *Littlejohn* (1896), 60 J. P. 101; 74 L. T. 24).

(*t*) A person who merely pays the owner of premises for being allowed to slaughter animals there does not use such premises as a slaughter-house within this section (*R.* v. *Heyworth* (1866), 30 J. P. 423; 14 L. T. 600). See *Second or Lower District Committee of Renfrew C. C.* v. *Anderson* (1899), 1 F. (Just. Cas.) 48. Using a place for the deposit for a night of a carcase of a horse in transit to the place where it is to be ultimately disposed of was held not to be a user contrary to s. 285 of the Burgh Police (Scotland) Act, 1892, which prohibits the user of unlicensed places for the slaughtering of horses, or as a place of deposit for their carcases (*Simpson* v. *Proctor* (1896), 23 Ct. of Sess. Cas. (4th ser.) (J.C.) 22). A market company who had not used any part of their premises as a slaughter-house before this Act was applied to the district were held to be rightly convicted under this section for using part of their premises as a slaughter-house after the Act was applied (*Liverpool New Market Co.* v. *Hodson* (1867), 31 J. P. 245; 15 L. T. 534). As to what is a sufficient licence, see *Anthony* v. *Brecon Market Co.* (1872), L. R. 7 Ex. 399; 31 J. P. 200; *Hughes* v. *Trew* (1877), 41 J. P. 453; 36 L. T. 585.

(*u*) See the Markets and Fairs Clauses Act, 1847, s. 42, *ante*, p. 1393. The L. G. B. have issued Model Byelaws for the regulation of slaughter-houses. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 247. As to the confirmation of these byelaws, see 47 & 48 Vict. c. 12, *ante*, p. 720. As to the responsibility of the master for a breach of the byelaws committed by the servant, see *Collman* v. *Mills*, [1897] 1 Q. B. 396; 61 J. P. 102.

every twenty-four hours, and requiring them to be provided with a sufficient supply of water, and they may impose pecuniary penalties on persons breaking such byelaws; provided that no such penalty exceed for any one offence the sum of five pounds, and in the case of a continuing nuisance the sum of ten shillings for every day during which such nuisance shall be continued after the conviction for the first offence.

129. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special Act, or of the non-observance of any of the byelaws or regulations made by virtue of this or the special Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may suspend for any period not exceeding two months the licence granted to such person under this or the special Act, or, in case such person be the owner or proprietor of any registered slaughter-house or knacker's yard, may forbid for any period not exceeding two months the slaughtering of cattle therein; and such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special Act, declare the licence granted under this or the special Act revoked, or, if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein; and whenever the licence of any such person is revoked as aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's yard is absolutely forbidden as aforesaid, the commissioners may refuse to grant any licence whatever to the person whose licence has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Justice may suspend or revoke licences of slaughter-houses, etc. or forbid use of registered slaughter-houses, etc.

130. Every person who during the period for which any such licence is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's yard to which such licence relates, or otherwise uses such slaughter-house or knacker's yard, or allows the same to be used as a slaughter-house or knacker's yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding five pounds for such offence, and a further penalty of five pounds for every day on which any such offence is committed after the conviction for the first offence.

Penalty for slaughtering cattle during suspension of licence, etc.

131. The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butchers' meat, or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there, and in case such officer shall find any cattle, or the carcase or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons (*v*); and in case upon such inspection and examination such cattle, carcase, or part of a carcase, be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and such justice may adjudge the person to whom such cattle, carcase, or part of a carcase, belongs, or in

Officers may enter and inspect slaughter-houses, etc. and seize and destroy carcases, etc. unfit for food.

(*v*) See also the P. H. A., 1875, s. 116, *ante*, p. 215, and the P. H. A., 1890, s. 28, *ante*, p. 846.

whose custody the same is found, to pay a penalty not exceeding ten pounds for every such animal, or carcase, or part of a carcase, so found; and the owner or occupier of any building or place kept or used for the sale of butchers' meat, or for slaughtering cattle, and every other person, who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining, seizing, or carrying away any such animal, or carcase, or part of a carcase, so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding five pounds for each offence.

* * * * *

THE BATHS AND WASHHOUSES ACT, 1847.

(10 & 11 VICT. c. 61.) (x)

An Act to amend the Act for the Establishment of Public Baths and Washhouses. [2nd July, 1847.]

[*Preamble recites* 9 *&* 10 *Vict. c.* 74.]

Construction.

[1.] The recited Act, as amended by this Act, and this Act shall be construed and be carried into execution as one Act.

Interpretation.

2. The following words and expressions in the recited Act shall have in the said Act and this Act the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

"Parish." "Parish" shall mean not only every place having separate overseers of the poor and separately maintaining its own poor, but also every place maintaining its own poor and having a vestry (y):

"Ratepayers." "Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish (z):

"Vestry." "Vestry" shall mean not only a vestry as defined in the said Act, but also any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.

Acts of any person acting as commissioner, etc. to be valid, notwithstanding disqualification, etc.

3. . . . (a) All acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, whether appointed before or after the passing of this Act, shall, notwithstanding his disqualification or want of qualification for or any defect or irregularity in or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified, or there had not been any such defect or irregularity.

Incorporation of 8 & 9 Vict. c. 18, in part.

4. The Lands Clauses Consolidation Act, 1845 (b), shall be incorporated with the recited Act and this Act: Provided always, that the council and commissioners respectively shall not purchase or take any lands otherwise than by agreement.

Proportion of washing accommodation for labouring classes.

5. The number of washing tubs or troughs for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the washing tubs or

(x) See 9 & 10 Vict. c. 74, *ante*, p. 1372; 41 & 42 Vict. c. 14, *post*, p. 1669; and 45 & 46 Vict. c. 30, *post*, p. 1705.
(y) See note (u) to 9 & 10 Vict. c. 74, s. 2, *ante*, p. 1372.
(z) These words do not require actual payment of the rates.
(a) The previous part of this section was repealed by the S. L. R. A., 1875.
(b) *Ante*, p. 1321.

troughs of any higher class, if but one, or of all the higher classes, if more than one, in the same building or buildings (*c*).

* * * * *

Charges for use of baths, etc.

7. The council and the commissioners respectively may from time to time make such reasonable charges for the use of the baths and washhouses and open bathing places provided under the recited Act and this Act respectively as they think fit, not exceeding the charges mentioned in the Schedule annexed to this Act (*d*).

* * * * *

SCHEDULE TO WHICH THIS ACT REFERS.

Charges for the Baths and Washhouses and Open Bathing Places.

1. *Baths for the Labouring Classes.*

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old :

Cold bath, or cold shower-bath, any sum not exceeding	One Penny.
Warm bath, or warm shower-bath, or vapour-bath, any sum not exceeding	Two-pence.

For several children, not above eight years old, nor exceeding four, bathing together :

Cold bath, or cold shower-bath, any sum not exceeding	Two-pence.
Warm bath, or warm shower-bath, or vapour bath, any sum not exceeding	Four-pence.

2. *Baths of any Higher Class.*

Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

3. *Washhouses for the Labouring Classes.*

Every washhouse to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying :

For one hour only, in any one day, any sum not exceeding	One Penny.
For two hours together, in any one day, any sum not exceeding	Three-pence.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

(*c*) See as to baths, 9 & 10 Vict. c. 74, s. 36, *ante*, p. 1381. Section 6 was repealed by the S. L. R. A., 1875, as also was s. 8.

(*d*) As to recovery of charges, see 9 & 10 Vict. c. 76, s. 38, *ante*, p. 1381.

4. *Washhouses of any Higher Class.*

Such charges as the council and the commissioners respectively think fit.

5. *Open Bathing Places.*

Where several persons bathe in the same water, for one person one halfpenny (*e*).

THE CEMETERIES CLAUSES ACT, 1847.

(10 & 11 VICT. c. 65.) (*f*)

An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Cemeteries. [9th July, 1847.]

Incorporation with special Act.

[1.] This Act shall extend only to such cemeteries as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Interpretation.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

"The special Act." "Prescribed." "The lands." "The company."

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the making of a cemetery, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the company" shall mean the person by the special Act authorised to construct the cemetery.

Interpretations in this and the special Act.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number. Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

Gender. Words importing the masculine gender shall include females:

"Person." The word "person" shall include a corporation, whether aggregate or sole:

"Lands." The word "lands" shall include messuages, lands, and hereditaments, of any tenure:

"The cemetery." The expression "the cemetery" shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorised to be constructed:

(*e*) This charge is now increased to one penny (41 & 42 Vict. c. 14, s. 14, *post*, p. 1671). As to charges for covered swimming baths, see 41 & 42 Vict. c. 14, s. 4, *post*, p. 1670.

(*f*) This Act is incorporated with the P. H. (Interments) Act, 1879, *ante*, p. 709.

The word "month" shall mean calendar month: "Month."

The expression "superior courts" shall mean her Majesty's superior courts at Westminster . . . as the case may require (*g*): "Superior Courts."

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath.

The expression "Established Church" shall mean the . . . church of England . . . as by law established (*g*): "Established Church."

The word "county" shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town: "County."

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorised or required to be done by "two justices," the expression "two justices" shall be understood to mean two or more justices met and acting together (*h*): "Justice." "Two justices."

The expression "quarter sessions" shall mean the quarter sessions as defined by the special Act; or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace. "Quarter sessions."

And with respect to citing this Act or any part thereof, be it enacted as follows: *Citing the Act.*

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Cemeteries Clauses Act, 1847." Short title.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates. Form in which portions of this Act may be incorporated in other Acts.

And with respect to the making of the cemetery, be it enacted as follows: *Making of cemetery.*

6. Where by the special Act the company shall be empowered for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845 (*i*), and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously Taking of lands for purposes of special Act to be subject to this Act and the Lands Clauses Act. 8 & 9 Vict. c. 18.

(*g*) Words relating to Ireland only are here omitted.
(*h*) And see s. 64, *post*, p. 1449.
(*i*) *Ante*, p. 1321. A local authority may obtain a provisional order for the compulsory *purchase* of land under s. 176 of the P. H. A., 1875, *ante*, p. 415.

affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845 (*j*), for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

Correction of errors and omissions in special Act.

7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described in the special Act or the schedule thereto, the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof; and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate, as if such omission, mis-statement, or wrong description had not been made.

Certified copies of alterations, etc. to be evidence.

8. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Land used for burials not to be used for other than authorised purposes.

9. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose except such as shall be authorised by this (*k*) or the special Act, or any Act incorporated therewith.

Cemetery not to be within a certain distance of houses.

10. No part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or if no distance be prescribed, two (*l*) hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house (*m*).

(*j*) See note (*i*), *ante*, p. 1441.

(*k*) See s. 40, *post*, p. 1446. See also *R.* v. *Twiss* (1869), L. R. 4 Q. B. 407; 33 J. P. 516; *Campbell* v. *Liverpool Corporation* (1870), L. R. 9 Eq. 579; *Harper* v. *Forbes* (1859), 5 Jur. (N.S.) 275. And see the Burial Act, 1900, s. 6, *post*, p. 1980, as to the necessity for leave of the L. G. B. to the use of unconsecrated land for other purposes.

(*l*) Now one hundred yards. See the Burial Act, 1906, s. 2, *post*, p. 2069.

(*m*) This distance is to be calculated from the house itself, not from the curtilage (*Wright* v. *Wallasey L. B.* (1887), 18 Q. B. D. 783; 52 J. P. 4). See also s. 9 of the Burials Act, 1855, which prevents land not already used or appropriated as a cemetery being used for actual burials within one hundred yards of a dwelling-house without the consent of the owner and occupier. This section is directed against actual burial, and did not prevent the inclusion of land within the prescribed distance in the cemetery, so long as it was not used for actual burials (*Cowley* v. *Byas* (1877), 5 Ch. D. 944; 41 J. P. 804), but it was held to prevent a burial authority, who had laid out a burial ground since 1855, from using it for burials within two hundred yards of a dwelling-house erected after the burial ground had been laid out, without the consent mentioned (*Godden* v. *Hythe Burial Board*, [1906] 2 Ch. 270; 70 J. P. 285). The law as settled by this decision has, however, since been modified

11. The company, upon any land which by the special Act they are authorised to use for the purposes of the cemetery, may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit (*n*). Company may build chapels, and lay out their grounds.

12. The company, upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit. Company may make or widen roads to cemetery.

13. Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof, if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law. No road to be widened without consent.

14. The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same. Improvement of roads.

15. [*Cemetery to be inclosed and fenced* (*o*).]

16. The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the monies to be received by them by virtue of this and the special Act (*p*). Cemetery to be kept in repair.

17. Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers (*q*). Compensation for damage.

And with respect to preventing nuisance from the cemetery, be it enacted as follows : *Prevention of nuisances.*

18. The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of Power to make sewers, drains, etc. in and about the cemetery.

by s. 1 of the Burial Act, 1906, which enacts that the consent above mentioned shall not be and shall be deemed never to have been required in any case where the dwelling-house is or was begun to be erected, or is or was erected or completed after any part of the ground is or has been used or appropriated for a burial ground, subject to a proviso for certain vested rights. It seems that the necessary consents may be purchased, it is not required that they should in all cases be given for nothing. No action can be brought under s. 9 of the Act of 1855 by a person who is a mere nominee of one who has just sold the land to the local authority for a cemetery (*Toms* v. *Clacton U. D. C.* (1898), 62 J. P. 505 ; 78 L. T. 712). As to the position of an owner within an area when an Order in Council requires the consent of the L. G. B., see *Clegg* v. *Metcalfe* (1914), 30 T. L. R. 410.

By s. 5 of the Cremation Act, 1902, no crematorium shall be constructed nearer to any dwelling-house than two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority.

(*n*) See s. 25, *post*, p. 1445, and 63 & 64 Vict. c. 15, s. 2, *post*, p. 1978.

(*o*) This section no longer applies to cemeteries provided under the Public Health (Interments) Act, 1879. See 63 & 64 Vict. c. 15, s. 10. It required the provision of a wall or fence at least eight feet high. Burial grounds provided under the Burial Acts are not subject to any statutory requirements as to the height of fences, but the L. G. B. require all burial grounds to be effectually walled or fenced, especially with regard to their close construction so as to exclude dogs or other animals.

(*p*) The company are occupiers and rateable (*R.* v. *St. Mary Abbotts, Kensington* (1841), 12 A. & E. 824 ; and see *R.* v. *Abney Park Cemetery Co.* (1874), L. R. 8 Q. B. 515 ; 38 J. P. 822).

(*q*) See also *Crowhurst* v. *Amersham Burial Board* (1879), 4 Ex. D. 5.

the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

Provisions of 10 & 11 Vict. c. 17 incorporated with this Act.

19. When any street or road or sewer shall be opened with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847 (*r*), with respect to breaking up of streets for the purpose of laying pipes, so far as the same are consistent with this Act and applicable thereto, shall be incorporated with this Act, and shall apply to the company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer.

Penalty on company for allowing water to be fouled.

20. If the company at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of fifty pounds (*s*).

By whom, how, and within what time, such penalty may be recovered.

21. The said penalty, with full costs of suit, may be recovered by any person having right to use the water fouled by such offensive matter, in any of the superior courts, by action of debt or on the case: Provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

Damages, or a daily penalty during the continuance of the offence, after notice, may be recovered.

22. In addition to the said penalty of fifty pounds, (and whether such penalty is recovered or not,) any person having right to use the water fouled by such offensive matter may sue the company, in an action on the case, in any court of competent jurisdiction, for any damage specially sustained by him by reason of the water being so fouled; or if no special damage be alleged, for the sum of ten pounds for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the company by such person.

Burials.

And with respect to burials in the cemetery, be it enacted as follows:

Part of cemetery may be set apart for burial according to rites of Established Church.

23. The bishop of the diocese in which the cemetery is situated may, on the application of the company (*t*), consecrate any portion of the cemetery set apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

Consecrated and unconsecrated ground to be defined.

24. The company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery (*u*).

(*r*) Sections 28—34, *ante*, pp. 1412—1414.

(*s*) See also *Ballard* v. *Tomlinson* (1885), 29 Ch. D. 115; 49 J. P. 692.

(*t*) It did not appear to be obligatory on the company to make this application. Therefore it would seem that no *mandamus* would lie to make them do it as it would in the case of a burial board under s. 12 of the Burial Act, 1857. And if no part of the cemetery is consecrated, then ss. 24—34 of this Act have no application. But now under 63 & 64 Vict. c. 15, s. 1, *post*, p. 1977, there is provision made for enforcing consecration of part in the case of a cemetery provided by a burial authority within the meaning of that Act.

(*u*) No wall or fence between the consecrated and unconsecrated portions is necessary if sufficient boundary marks of iron or stone be maintained (Burial Act, 1857, s. 11). See also *R.* v. *Tiverton* (1849), 13 L. T. (O.S.) 233. An urban district council acting as a burial board proposed to use the word "general" instead of the word "unconsecrated." The L. G. B. stated that they were advised that if unconsecrated ground was not so described in documents it was essential that these should be so framed as to leave no doubt as to the

25. The company shall build, within the consecrated part of the cemetery and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rights of the Established Church (*x*). Chapel for Established Church service.

26. No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church (*y*). Removal of bodies from consecrated ground.

27. [*Appointment and licensing of chaplain.*] (*z*)

28. [*Burial service over bodies entitled to burial in consecrated ground.*]

29. Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery. Other clergymen of Established Church may be allowed to officiate.

30. [*Company to pay the chaplain a stipend approved by the bishop.*]

31. [*Stipend may be recovered by action at law.*]

32. All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain, according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England (*a*); and such register books, or copies or extracts therefrom, shall be received in all courts in evidence of such burials; and copies or transcripts thereof shall be from time to time sent to the registrar of the ecclesiastical court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parishes within his diocese. Register of burials in the consecrated portion.

intention to denote unconsecrated ground by any other description which might be adopted.

(*x*) See, however, 63 & 64 Vict. c. 15, s. 2, *post*, p. 1978.

(*y*) By s. 25 of the Burial Act, 1857, no body may be removed from a place of burial (except from one consecrated place of burial to another by faculty granted by the ordinary for that purpose), without licence under the hand of a Secretary of State. See also *St. Helen's, Bishopsgate, Rector* v. *Parishioners*, [1892] P. 259; *St. Mary-at-Hill* v. *Parishioners*, [1892] P. 394; 56 J. P. 824; *St. Botolph Without, Aldgate, Vicar* v. *Parishioners* (*No.* 1), [1892] P. 161; *Lee* v. *Hawtrey*, [1898] P. 63; *St. Nicholas, Leicester* v. *Langton*, [1899] P. 19. It is within the jurisdiction of the Consistory Court to grant a faculty for the examination of the contents of a coffin buried in consecrated ground, and s. 25 of the Burial Act, 1857, does not make the licence of the Home Secretary a condition precedent to such grant (*R.* v. *Tristram*, [1898] 2 Q. B. 371). But a consistory Court has no power to order the disinterment of a body, or to issue a citation to a cemetery company to show cause against the making of such an order (*R.* v. *Tristram* (1900), 63 J. P. 391; 80 L. T. 414).

(*z*) By s. 7 of the Burial Act, 1900, *post*, p. 1981, the power of the burial authority to appoint a chaplain for a burial ground provided under the P. H. (Interments) Act, 1879, shall cease. This is because under the same section the incumbent of the parish is to perform the service for his own parishioners and those dying in his parish, as he does under the Burial Acts. The same section also provides for registration of the burials.

(*a*) That is, under 52 Geo. 3, c. 146 (Form of Register, Form 29, Encyclopædia of Forms and Precedents, Vol. III., p. 135). See Brooke Little's Law of Burials, 2nd ed., p. 321. This, however, does not now apply to any burial in the consecrated part of a burial ground provided under the P. H. (Interments) Act, 1879, but burials there are now under s. 7 of the Burial Act, 1900, *post*, p. 1981, registered like burials in the unconsecrated part.

Registers to be subject to the regulations of 6 & 7 Will. 4, c. 86, as to searches, etc.

33. The said register books, so far as respects searches to be made therein, and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by the Births and Deaths Registration Act, 1836, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

Appointment of clerk for consecrated part of the cemetery.

34. The company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the services for burials in the consecrated part of the cemetery, and allow to such clerk such stipend (*b*) as they think proper out of the monies to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

Burial of persons not members of Established Church.

35. The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the company appoint (*c*).

Any burial service may be performed in chapels on unconsecrated part.

36. The company may allow, in any chapel built within the unconsecrated part of the cemetery (*d*), a burial service to be performed according to the rites of any church or congregation other than the Established Church, by any minister of such other church or congregation duly authorised by law to officiate in such church or congregation, or recognised as such by the religious community or society to which he belongs.

Power to appoint grave-diggers, etc.

37. The company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allowances as they think fit out of the monies to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure (*e*).

Regulations.

38. The company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

No burials under or close to chapels.

39. No body shall be buried in any vault under any chapel of the cemetery, or within fifteen feet of the outer wall of any such chapel.

Exclusive rights of burials.

And with respect to exclusive rights of burial, and monumental inscriptions, in the cemetery, be it enacted as follows:

Parts of the cemetery set apart for grant of exclusive rights of burial.

40. The company may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any

(*b*) By s. 3 (5) of the Burial Act, 1900, no fee other than fees payable to a sexton for services rendered by him, shall be paid to any clerk or other ecclesiastical officer in respect of interments in a burial ground maintained by a burial authority. This, however, is subject to a proviso for compensation in respect of rights existing at the date of the passing of the Act.

(*c*) By s. 9 of the Burial Act, 1900, the unconsecrated part of a burial ground provided under the P. H. (Interments) Act, 1879, shall be allotted in such manner and in such portions as may be sanctioned by one of her Majesty's principal Secretaries of State.

(*d*) See 63 & 64 Vict. c. 15, s. 2, *post*, p. 1978.

(*e*) A byelaw of a cemetery prohibited any discharged servant from being admitted to the cemetery except by special leave of the directors, and it authorised his removal. D., the owner of a grave, employed W., a discharged servant, to do some work:—*Held*, that there was nothing unreasonable in the byelaw, and that W. was rightly excluded by force from the cemetery (*Martin* v. *Wyatt* (1883), 48 J. P. 215).

tablet or monumental inscription on the walls of any chapel or other building within the cemetery (*f*).

41. The company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an extensive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the company.

Plan of parts set apart for grant of exclusive rights, and book of reference thereto, to be kept.

42. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet, or gravestone, may be made in the form in the Schedule to this Act annexed, or to the like effect, and where the company are not incorporated it may be executed by the company or any two or more of them (*g*).

Grant of exclusive right, etc. may be according to form in Schedule.

43. A register of all such grants shall be kept by the clerk to the company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also of the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by any grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed the sum of one shilling, to the clerk of the company.

Register of grants to be kept.

44. The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will (*h*).

Rights of burial may be assigned or bequeathed.

45. Every such assignment made in the lifetime of the assignor shall be be by deed duly stamped, in which the consideration shall be duly set forth, and may be in the Form in the Schedule to this Act annexed, or to the like effect (*i*).

Form of assignments.

46. Every such assignment shall, within six months after the execution thereof, if executed in Great Britain . . . or within six months after

Assignments to be registered.

(*f*) The sale of an exclusive right of burial under 15 & 16 Vict. c. 85, s. 33, was held not to deprive the burial authority of the general control of the burial ground under s. 38, or to prevent their removing a wreath covered with a glass shade and wire frame which had been placed on the grave (*McGough* v. *Lancaster Burial Board* (1888), 21 Q. B. D. 323; 52 J. P. 740). The company are liable to pay income tax on sums paid to them for keeping private graves in order (*Paisley Cemetery Co.* v. *Reith*, W. N. (1899), 196; 63 J. P. 806).

(*g*) *Sic.* As to the form, see an adaptation for the use of local authorities, Form 35, Encyclopædia of Forms and Precedents, Vol. III., p. 145.

(*h*) A burial company having erected a memorial stone, removed and sold it because it was not paid for:—*Held*, that the proper remedy of the company was to sue for the money, and that they had no right to remove the stone (*Sims* v. *London Necropolis Co.* (1884), 1 T. L. R. 584).

(*i*) See also Form 36, Encyclopædia of Forms and Precedents, Vol. III., p. 146.

the arrival thereof in Great Britain . . . if executed elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same manner as that of the original grant; and until such entry or memorial, no right of burial shall be acquired under any such memorial (*k*); and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Probates of wills disposing of rights of burial to be registered.

47. An entry or memorial of the probate of every will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said will an entry of such disposition, shall, within six months after the probate of such will, be made in the said register, in the same manner as that of the original grant; and until such entry no right of exclusive burial shall be acquired under such will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Burials in places where exclusive right has been granted.

48. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial.

No grant to give right in consecrated ground, etc. to persons not entitled to be buried according to rites of Established Church.

49. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usage of the Established Church, or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery.

Power to remove monuments erected without authority.

50. The company may take down and remove any gravestone, monument, tablet, or monumental inscription which shall have been placed within the cemetery without their authority (*l*).

Rights of bishop to object to monumental inscriptions in consecrated part of cemetery.

51. The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law (*m*) has to object to or procure the removal of any monumental inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

Payments to incumbents of parishes.

And with respect to payments to incumbents of parishes or ecclesiastical districts, and to parish clerks, be it enacted as follows (*n*):

* * * * *

(*k*) *Sic. Quære*, a mistake for "assignment."

(*l*) If the right be granted to the grantee and his heirs, it is doubtful whether this section would apply. See *Matthews* v. *Jeffery* (1881), 6 Q. B. D. 290; 45 J. P. 361. An exclusive right of burial is an easement, and can only be granted by deed (*Bryan* v. *Whistler* (1828), 8 B. & C. 288). See also the Burial Act, 1852, s. 33, and *Ashby* v. *Harris* (1868), L. R. 3 C. P. 523; *McGough* v. *Lancaster*, *ante*, p. 1447.

(*m*) See *Maidman* v. *Malpas* (1794), 1 Hagg. Con. 205; *Harper* v. *Forbes* (1859), 5 Jur. (N.S.) 275; *Ex parte Medwin* (1853), 1 El. & Bl. 609; *Keet* v. *Smith* (1876), 1 P. D. 73.

(*n*) Sections 52—57 entitled incumbents and parish clerks only to such fees as were prescribed by the special Act. They were extended to the disposition or interment of the ashes of a cremated body by s. 13 of the Cremation Act, 1902. Where a cemetery has been provided by a local authority under the P. H. (Interments) Act, 1879, *ante*, p. 709, that Act is the special Act (s. 3), and in such case the special Act prescribes no sums as payable to incumbents. In such a cemetery, ss. 52—57 are wholly inapplicable. But the Burial Act, 1900, by s. 3, now requires the burial authority to prepare a table of fees to be

And with respect to the protection of the cemetery, be it enacted as follows : *Protection of cemetery.*

58. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds. Penalty for damaging the cemetery.

59. Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds. Disturbances and nuisances in cemetery.

60. And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account to be prepared, showing the total receipt and expenditure of all monies levied by virtue of this or the special Act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection ; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds (*o*). Annual accounts.

* * * * *

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows : *Recovery of damages and penalties.*

62. The clauses of the Railways Clauses Consolidation Act, 1845 (*p*), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act ; and such clauses shall apply to the cemetery and to the company respectively (*q*). Railways Clauses Consolidation Act (8 & 9 Vict. c. 20), incorporated as to damages, etc.

* * * * *

64. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices. Powers of justices.

65. [*False evidence.*] (*r*)

approved by a Secretary of State, and these fees are to be collected by the authority, and paid over to the minister or sexton performing the services.

(*o*) Section 61 (as to tender of amends) was repealed by the S. L. R. A., 1894. See now the Public Authorities Protection Act, 1893, *ante*, p. 963.

(*p*) *Ante*, p. 1369.

(*q*) Section 63 related only to penalties in Ireland, and was repealed by the S. L. R. A., 1875.

(*r*) Repealed by the Perjury Act, 1911.

Access to special Act.

And with respect to affording access to the special Act, be it enacted as follows:

Copies of special Act to be open to inspection.

66. The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace of the county in which the cemetery is situated a copy of such special Act, so printed as aforesaid; and the said clerk of the peace shall receive, and he and the company respectively shall keep, the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by the Parliamentary Documents Deposits Act, 1837.

7 Will. 4 & 1 Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

67. If the company fail to keep or deposit any of the said copies of the special Act, as herein beforementioned, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Saving as to future Acts.

68. Nothing herein contained shall be deemed to exempt the company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

* * * * *

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

FORM OF GRANT OF RIGHT OF BURIAL.

By virtue of [*here name the special Act*] we [*here state the name or description of the company*], in consideration of the sum of to us paid by , of , do hereby grant unto the said the exclusive right of burial [*or* the right of burying bodies, *as the case may be*,] [*or* the right of placing a monument, tablet, or gravestone,] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add* "numbered on the plan of the cemetery, made in pursuance of the said Act,"] to hold the same to the said in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Given under our common seal, [*or* under our hands and seals, *as the case may be*,] this day of in the year of our Lord .

FORM OF ASSIGNMENT OF RIGHT OF BURIAL.

I, *A.B.*, of , in consideration of the sum of paid to me by *C.D.*, of , do hereby assign unto the said *C.D.* the exclusive right of burial in [*here describe the place*], and numbered on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or* unto *A.B.* of] in perpetuity [*or as the case may be*] by [*here state the name of the company*], by a deed of grant bearing date the day of , and all my estate, title, and interest therein, to hold the same unto the said *C.D.* in perpetuity [*or, as the case may be*, for the remainder of the period for which the same was granted by the said company] subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal, this day of .

THE TOWN POLICE CLAUSES ACT, 1847.

(10 & 11 VICT. c. 89.) (*t*)

An Act for consolidating in one Act certain provisions usually contained in Acts for regulating the Police of Towns. [22nd July, 1847.]

[1.] This Act shall extend only to such towns or districts in England or Ireland as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act. Incorporation with special Act.

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows: *Interpretation.*

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district defined or comprised therein, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof. "The special Act." "Prescribed." "The commissioners."

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say), Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number: Number.

Words importing the masculine gender shall include females: Gender.

The word "person" shall include a corporation, whether aggregate or sole: "Person."

The word "lands" shall include messuages, lands, tenements, and hereditaments, of any tenure: "Lands."

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare, or public passage, within the limits of the special Act (*u*): "Street."

(*t*) For the incorporation of parts of this Act with the P. H. A., 1875, see s. 171 of that Act, *ante*, p. 392. This Act is amended by 52 & 53 Vict. c. 14, *post*, p. 1840, which extends to omnibuses the provision of certain sections relating to hackney carriages.

(*u*) It appears from *Curtis* v. *Embery* (1872), L. R. 7 Ex. 369, that in this Act the definition here given must be adopted. See also *Jones* v. *Short* (1900), 69 L. J. Q. B. 473; 64 J. P. 247.

See as to the meaning of this term *Maddock* v. *Wallasey L. B.*, *ante*, p. 1394; *Heatherton* v. *Watson* (1880), 7 Ct. of Sess. Cas. (4th ser.) (J.C.) 5. These cases decide that the seashore or foreshore is not a street; see also the notes to ss. 38 and 45, *post*.

The P. H. A., 1907, s. 81 (*ante*, p. 1142), where in force extends this definition for the purposes of s. 28 of this Act.

"Month." The word "month" shall mean calendar month:

"Superior courts." The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster . . .

"Oath." The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County." The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town:

"Justice." "Two justices." The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Quarter sessions." The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined shall mean the general or quarter sessions of the peace which shall be held in or at the place nearest to the district comprised within the special Act for the county in which such district or some part thereof is situated, or for some division of such county having a separate commission of the peace:

"Cattle." The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

Citing the Act.

And with respect to citing this Act, or any part thereof, be it enacted as follows:

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Town Police Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

Obstructions and Nuisances.

And with respect to obstructions and nuisances in the streets, be it enacted as follows (*x*):

Power to make orders for preventing obstructions in the streets during public processions, etc.

21. The commissioners may from time to time make orders (*y*) for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets, within the limits of the special Act,

(*x*) It is to be observed that many of the offences mentioned in the following sections are punishable under the provisions of the Highway Acts and the Vagrancy Acts, which should, therefore, be referred to in further illustration of the meaning of these sections.

(*y*) An urban authority acting under this section made an order that the constables stationed at certain crossings should give directions to the drivers of vehicles for the purpose of regulating the traffic. The driver of a motor cab was summoned for failing to stop his cab in accordance with the directions of the police officer on duty, and was convicted. The Divisional Court held that the order implied an obligation on the part of drivers to obey the directions of the constable, and that, therefore, the appellant was rightly convicted (*Dudderidge* v. *Rawlings* (1913), 77 J. P. 167; 108 L. T. 802). As to the prohibition of hawking by costermongers at stated times, see *Teale* v. *Williams* (1914), 137 L. T. Newsp. 37.

in all times of public processions, rejoicings, or illuminations, and in any case where the streets are thronged or liable to be obstructed (*z*), and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort; and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

Power to regulate the route of persons driving stage carriages, etc. near places of worship during hours of Divine service.

22. On application to the commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship within the limits of the special Act, the commissioners may make orders for regulating the route by which persons shall drive (*a*) any cart or carriage, or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of Divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving; and any orders so made shall be printed and put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct; and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

Power to stage carriages to deviate from route under order of commissioners.

23. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his licence which the driver of such stage carriage makes in consequence of any regulation or direction made or given by the commissioners (*c*).

Power to impound stray cattle.

24. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof (*d*), any constable or officer of police, or any person residing within the limits of the special Act, may seize amd impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle (*e*).

Power to sell cattle impounded for payment of penalty and expenses, after notice or advertisement.

25. If the said penalty and expenses be not paid within three days after such impounding, the pound-keeper or other person appointed by the commissioners for that purpose may proceed to sell or cause to be sold any

(*z*) See s. 28, *post*, p. 1454, and *Fox* v. *Palmer* (1858), 22 J. P. 449, in regard to an obstruction by running horses in the access to a market. As to obstruction by a theatre queue, see the cases cited in note (*x*), *post*, p. 1457.

(*a*) A local Act for a parish in which there was a large cattle market enacted that it shall not be lawful for any drover or other person to conduct or drive through any of the streets in the parish any oxen, sheep, or other cattle during Sunday:—*Held*, that a person driving a van with horses, in which were calves being conveyed to the market, was not driving or conducting cattle within the meaning of the statute (*Triggs* v. *Lester* (1866), L. R. 1 Q. B. 259; 30 J. P. 238).

(*c*) See *Chorlton* v. *Liggett* (1910), 74 J. P. 458; 103 L. T. 543. As no stage carriages are now licensed under the general law, this section is now inoperative.

(*d*) Under 4 Geo. 4, c. 95, s. 75, horses grazing on the side of a turnpike road with a man in charge of them were held not liable to be impounded as wandering, straying, or lying about the road (*Morris* v. *Jeffries* (1866), L. R. 1 Q. B. 261).

(*e*) The Protection of Animals Act, 1911, s. 7 (1), requires persons impounding animals to supply them with food and water, and imposes a fine for neglect of the duty. This provision does not apply to the keeper of the pound (*Dargan* v. *Davies* (1877), 2. Q. B. D. 118; 41 J. P. 468, decided under corresponding repealed provisions). The Act of 1911 also allows strangers to enter the pound and provide food and water under certain circumstances. The reasonable cost of food and water supplied is recoverable from the owners summarily (s. 7 (2), (3)). Under 1 & 2 Phil. & M. c. 12, s. 2, no person may take for impounding more than fourpence for any one whole distress, under the pain of £5 to the party grieved.

such cattle; but previous to such sale seven days notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

Persons guilty of pound breach to be committed for three months.

26. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months (*ee*).

Power to provide a pound.

27. The commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the commissioners (*f*).

Penalty on persons committing any of the offences herein named.

28. Every person who in any street (*g*), to the obstruction, annoyance or danger (*h*) of the residents or passengers (*i*), commits any of the following offences, shall be liable to a penalty not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted,

(*ee*) Compare 6 & 7 Vict. c. 30, s. 1, as to pound-breach, and see *R.* v. *Gee* (1885), 49 J. P. 212, 243; 1 T. L. R. 388, decided with reference to that Act.

(*f*) A person who distrains cattle is bound to impound them in a proper pound; and if the usual pound is in an unfit state, he must find another (*Bignell* v. *Clarke* (1860), 5 H. & N. 485; 29 L. J. Ex. 257). If the pound is wet and muddy, the distrainors are liable for any damage thereby caused to the distress (*Wilder* v. *Speer* (1838), 8 A. & E. 547; 7 L. J. Q. B. 249). As to the distance which animals may be taken to a pound, see *Coaker* v. *Willcocks*, [1911] 2 K. B. 124; 27 T. L. R. 357.

(*g*) See the definition in s. 3, *ante*, p. 1451, and compare the definition in the P. H. A., 1875, s. 4, *ante*, p. 15. See also in relation to certain offences under this section the provisions of s. 81 of the P. H. A., 1907.

(*h*) These words govern the whole of the section. Compare the language of the Highway Act, 1835, s. 72, and the cases decided thereon: *Stinson* v. *Browning* (1866), L. R. 1 C. P. 321; 30 J. P. 312; *Hill* v. *Somerset* (1885), 51 J. P. 356. See also *Brotherton* v. *Tittensor* (1896), 60 J. P. 72; *Strickland* v. *Hayes*, [1896] 1 Q. B. 290; 60 J. P. 164; *Mantle* v. *Jordan*, [1897] 1 Q. B. 248; 61 J. P. 119. But in proceedings for an offence it is not necessary to call persons who have been actually annoyed, etc. (*Woolley* v. *Corbishley* (1860), 24 J. P. 773; *Read* v. *Perrett*, *ante*, p. 1430; *R.* v. *Fermanagh JJ.* (1883), 14 L. R. Ir. 50; *McDonald* v. *White* (1882), 9 Ct. of Sess. Cas. (4th ser.), p. 43; *Black* v. *Simpson* (1883), 5 Coup., Ct. of Justiciary Cas. (Scotland), p. 212; *Semon* v. *Read* (1879), 4 Coup. 221; *Leisk* v. *Galloway* (1885), 12 Ct. of Sess. Cas. (4th ser.) (J. C.) 5). See, however, *Stanley* v. *Ferndale* (1892), 56 J. P. 709, where a conviction under a local Act was quashed on the ground that there was no evidence besides that of the constable that there was any annoyance. But where a byelaw of a borough provided that if any person should make any noise in the streets to the annoyance of the inhabitants he should be guilty of an offence, upon a summons against a newspaper boy for shouting out the name of a newspaper incessantly for six minutes, etc., it was held that it was not necessary to prove that more than one inhabitant had in fact been annoyed thereby (*Innes* v. *Newman*, [1894] 2 Q. B. 292; 58 J. P. 543). But the information should state the name of the person alleged to have been annoyed; see *per* Lord Salvesen in *Graham* v. *M'Lennan*, [1911] 5 S. C. (J.) 16.

(*i*) A byelaw contained the words "so as to constitute any reasonable ground of complaint to the passengers or the public," and the penalty was the same whichever class of persons had ground for complaint. Where an information and conviction described the offence as "contrary to the byelaw" without stating in terms any reasonable ground of complaint to the passengers or the public, or either of them, it was held that this statement was insufficient and the conviction was quashed (*Cotterill* v. *Lempriere* (1890), 24 Q. B. D. 634; 54 J. P. 583).

may be committed to prison, there to remain for a period not exceeding fourteen days; and any constable (*j*) or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence; (that is to say,)

Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises (*k*), trains, or breaks, or turns loose any horse or animal (*l*), or makes or repairs any part of any cart or carriage (except in cases of accident (*m*) where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal (*n*):

(*j*) This term includes any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority (the P. H. A., 1875, s. 171, *ante*, p. 392). The police who arrest an offender against this section require no authority to prosecute under s. 253 of the P. H. A., *ante*, p. 558 (*Jobson* v. *Henderson* (1900), 64 J. P. 425; 82 L. T. 260).

(*k*) See *Heatherton* v. *Watson*, *ante*, p. 1451.

(*l*) The owner of land adjoining a highway claiming the herbage on the side of the latter put his cattle thereon:—*Held*, that this was not turning an animal loose thereon (*Sherborn* v. *Wells* (1863), 27 J. P. 566; 3 B. & S. 784). See also the provisions of the Highway Acts as to animals straying upon highways, 5 & 6 Will. 4, c. 50, s. 74, and 27 & 28 Vict. c. 101, s. 25, and the cases decided on these sections: *Morris* v. *Jeffries* (1866), L. R. 1 Q. B. 261; 30 J. P. 198; *Lawrence* v. *King* (1868), L. R. 3 Q. B. 345; 32 J. P. 310; *Golding* v. *Stocking* (1869), L. R. 4 Q. B. 516; 33 J. P. 566; *Bothamley* v. *Danby* (1871), 24 L. T. 656. And see *Higgins* v. *Searle* (1909), 73 J. P. 185; 100 L. T. 280; *Jones* v. *Lee* (1911), 76 J. P. 137; 106 L. T. 123; *Ellis* v. *Banyard* (1911), 106 L. T. 51; 28 T. L. R. 122. See also the provisions of this Act as to impounding animals, ss. 24—27, *ante*, p. 1453. As to the liability of a person for damage caused by animals while being driven along a street, see *Phillips* v. *Nicoll* (1884), 11 Ct. of Sess. Cas. (4th ser.) 592; *Tillett* v. *Ward* (1882), 10 Q. B. D. 17; 47 J. P. 438; *Goodwyn* v. *Cheveley* (1859), 4 H. & N. 631; and generally as to leading or driving animals in streets, see s. 80 of the P. H. A., 1907.

(*m*) A motor omnibus broke down and was unable to proceed on its journey under its own mechanism. It was pushed into a side street and there repaired. It was held that this was not a case where repair on the spot was necessary, as if it could be pushed so far it could be pushed further, and the owner was not protected by the excepting clause in a similar section (*Chapman* v. *Rawlings* (1909), 73 J. P. 512; 101 L. T. 605).

(*n*) See also 57 & 58 Vict. c. 57, s. 226, as to the powers of the Board of Agriculture and Fisheries to make muzzling orders, and the Dogs Act, 1906, which deals with the liability of owners of dogs for injury to cattle, enables the Board of Agriculture and Fisheries to makes order as to wearing of collars, etc., and provides for the seizure of stray dogs, etc. The Board made an Order as to the wearing of collars under the Diseases of Animals Acts, 1894—1909, dated February 8th, 1910. As to the proof of *scienter*, in case of damage to human beings, see *Worth* v. *Gilling* (1867), L. R. 2 C. P. 1; *Baldwin* v. *Casella* (1872), L. R. 7 Ex. 325; *Applebee* v. *Percy* (1874), L. R. 9 C. P. 647; 38 J. P. 567; *Parker* v. *Walsh* (1884), 1 T. L. R. 583; *Sanders* v. *Teape* (1884), 48 J. P. 757; 51 L. T. 263. As to liability of master for injury to a third person caused by servant setting on dog, see *Baker* v. *Snell*, [1908] 2 K. B. 825. As to liability of the owner for injuries to cattle and sheep, see s. 1 of the Dogs Act, 1906. The following cases as to the law as it stood under the now repealed Dogs Act, 1865, may also be referred to, viz.: *Wright* v. *Pearson* (1869), L. R. 4 Q. B. 582; 33 J. P. 534; *Lewis* v. *Jones* (1884), 49 J. P. 198; *Grange* v. *Silcock* (1897), 61 J. P. 709; 77 L. T. 340; *Elliott* v. *Longden* (1901), 17 T. L. R. 648; *Gardner* v. *Hart* (1896), 44 W. R. 527; *M'Kone* v. *Wood* (1831), 5 C. & P. 1. The removal of a dog which is dangerous and is not kept under proper control from the jurisdiction of a police court after the date of the alleged offence and before the date of the information or complaint, does not take away the power of the magistrates under s. 2 of the Dogs Act, 1871, to make an order against the owner that the dog is to be destroyed, provided that there has been no bonâ fide disposal of the dog (*Lockett* v. *Withey* (1908), 74 J. P. 492; 25 T. L. R. 16). Where justices made an order under the same section that a dangerous dog "should be kept under proper control and led by a leash by day and chained up at night," the court refused to make absolute a rule for a *mandamus* to state a case on the ground that

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state (*o*) :

Every person who after public notice given by any justice, directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice :

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with some accident, and which for the public safety or other reasonable cause ought to be killed on the spot (*p*) :

Every person having the care of any waggon, cart, or arriage, who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage, as not to have due control over every animal drawing the same (*q*), or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side (*r*), or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road, (except in cases of actual necessity, or some sufficient reason for deviation,) or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care:

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet (*s*) :

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle (*t*) :

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting

the point could have been more conveniently raised by *certiorari* (*R.* v. *Owen, Ex parte Scorell* (1907), 72 J. P. 60; 52 Sol. J. 132).

(*o*) Proof that the defendant knew his dog had been bitten by a mad dog was held sufficient evidence of *scienter* in *Jones* v. *Perry* (1796), 2 Esp. 482.

(*p*) See the Protection of Animals Act, 1911, empowering the police to cause injured animals to be slaughtered, without the consent of the owner, after obtaining a veterinary certificate; and making the expenses recoverable from the owner as a civil debt.

(*q*) See *Phythian* v. *Baxendale,* [1895] 1 Q. B. 678; 59 J. P. 217; *Hinde* v. *Evans* (1906), 70 J. P. 458.

(*r*) There is not at common law any such rule of the road as to make the left always the proper side. See *Finnegan* v. *L. & N. W. Rail. Co.* (1889), 53 J. P. 663; 5 T. L. R. 598. As to the power of the local authority to make regulations as to street traffic, see s. 78 of the P. H. A., 1907. The absence of other traffic on the road is a good defence to proceedings under a byelaw similar to the text (*Bolton* v. *Everett* (1911), 75 J. P. 534; 105 L. T. 830). And see *Chorlton* v. *Liggett* (1910), 74 J. P. 458; 103 L. T. 543; *Nuttall* v. *Pickering,* [1913] 1 K. B. 14; 77 J. P. 30.

(*s*) See *Robertson* v. *Burkitt* (1858), 7 W. R. 50.

(*t*) See *Chatterton* v. *Parker,* [1914] W. N. 206. Note that this clause, unlike 5 & 6 Will. 4, c. 50, s. 78, includes riding as well as driving furiously. See *Williams* v. *Evans* (1876), 1 Ex. D. 277; 41 J. P 151. See also 24 & 25 Vict. c. 100, s. 35, and s. 79 of the P. H. A., 1907. A bicycle is a carriage within this provision (*Taylor* v. *Goodwin* (1879), 4 Q. B. D. 228; 43 J. P. 653; *McKee* v. *Magrath* (1892), 30 L. R. Ir. 41). A motor bicycle is a carriage within the meaning of the Customs and Inland Revenue Act, 1888, s. 4 (*O'Donoghue* v. *Moon* (1904), 68 J. P. 349; 90 L. T. 843). See, further, as to bicycles and tricycles, 51 & 52 Vict. c. 41, s. 85, *ante*, p. 779. By s. 1 (1) (b) of the Locomotives on Highways Act, 1896, a light locomotive is a carriage within the meaning of this section, and by s. 4 of that Act, no light locomotive shall travel along a public highway at a greater speed than fourteen miles an hour, or than any less speed that may be prescribed by regulations of the L. G. B. Such regulations are contained in the Stat. R. & O., 1896, p. 158. Breach of any such regulation is punishable on summary conviction, under s. 7,

down passengers, (except hackney carriages, and horses and other beasts of draught or burthen, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority,) and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means (*u*) wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare (*x*) :

by a fine not exceeding ten pounds. See a case under these regulations, *Smit* v. *Boon* (1901), 65 J. P. 486 ; 84 L. T. 593.

(*u*) Three defendants were convicted by the defendant justices, under this section, for obstructing passengers in the public street and unlawfully preventing persons passing there. It appeared by the evidence of a police constable that the three defendants were standing, with three or four other persons on the pavement, blocking up the same. Several persons had to leave the footpath and go into the road in order to pass. The constable spoke to the defendants, and asked them to move off. They then walked up the street, all three abreast, causing passengers who met them to leave the footpath and go into the road :—*Held*, that the conviction was wrong, and could not be sustained (*R.* v. *Long* (1888), 52 J. P. 630 ; 59 L. T. 33). And see *R.* v. *Williams* (1891), 55 J. P. 406.

A shopkeeper in a borough placed goods upon the pavement in front of his shop for sale. Upon being summoned under this section for obstructing the footway, he contended that he bonâ fide claimed the right to place his goods there. The justices considered that their jurisdiction was ousted, but stated a case :—*Held*, that the justices ought to determine whether the land on which the goods were placed was part of the public highway or not, and that unless the defendant established a restricted dedication no question as to a claim of right arose (*Leicester Urban Sanitary Authority* v. *Holland* (1888), 52 J. P. 788 ; 57 L. J. M. C. 75). To a complaint before justices under the section for obstructing a public footway, it is a good defence that such footway was dedicated to the public subject to the right of the defendant to commit the acts of obstruction complained of, and such defence if raised bonâ fide ousts the jurisdiction of the justices. The evidence, however, to establish such a defence should be of a cogent character (*R.* v. *Londonderry JJ.*, [1902] 2 I. R. 266).

(*x*) When an undoubted obstruction is proved, the plaintiff need not call persons to prove that they were obstructed, and, on the other hand, no evidence can be called to prove that they were not obstructed. See *Read* v. *Perrett*, *ante*, p. 1430; *McDonald* v. *White*, *ante*, p. 1454. Whether a person wilfully causes an obstruction in a public thoroughfare is in each case a question of degree depending upon the particular facts (*Dunn* v. *Holt* (1904), 73 L. J. K. B. 341 ; 68 J. P. 271 ; *Lowdens* v. *Keaveney* (1903), 67 J. P. 378). A person who had a caravan for the sale of goods stationed in a market place near what was described as a footpath, over which a crowd collected and obstructed the passage :—*Held*, that he was not guilty of an offence against this clause (*Ball* v. *Ward* (1875), 40 J. P. 213 ; 33 L. T. 170). An obstruction is not caused by persons stopping and talking in the street, unless it is done wilfully and pertinaciously (*Wemyss* v. *Black* (1881), 8 Ct. of Sess. Cas. (Just.) (4th ser.), 25). An indictable obstruction may be caused by attracting a crowd by means of pictures, etc. in shop windows (*R.* v. *Carlile* (1832), 6 C. & P. 636; and see 46 J. P. 19). A street preacher who collected a crowd in a highway was held rightly convicted under 5 & 6 Will. 4, c. 50, s. 72, though there was room outside the crowd for foot passengers and vehicles to pass and repass (*Homer* v. *Cadman* (1886), 55 L. J. M. C. 110 ; 50 J. P. 454). And see *Back* v. *Holmes* (1887), 57 L. J. M. C. 37 ; 51 J. P. 693 ; *Ex parte Lewis* (1888), 21 Q. B. D. 191 ; 52 J. P. 773 ; *Burden* v. *Rigler*, [1911] 1 K. B. 337 ; 75 J. P. 36. A person who by carrying on a theatre causes a crowd to assemble and obstruct the highway, thereby creating a nuisance to private adjoining owners, is answerable for the obstruction if it be the necessary result of his acts, even though it be not his actual object (*Lyons, Son & Co.* v. *Gulliver and Capital Syndicate, Ltd.* (1914), 78 J. P. 98 ; 30 T. L. R. 75). There is no difference of principle in this respect between outdoor and indoor entertainments (*Barber* v. *Penley*, [1893] 2 Ch. 447, and see *Wagstaffe* v. *Edison* (1893), 10 T. L. R. 80). A person riding a bicycle on a footpath by the side of a public road was held rightly convicted under an Irish Act (14 & 15 Vict. c. 92, s. 13) of obstructing the free passage of foot passengers, although no evidence was produced of any foot passengers having been actually obstructed (*McKee* v. *Magrath* (1892), 30 L. R. Ir. 41). See also *R.* v. *Simpson*, Times, January 23rd, 1895. Where there is a public way, though it may only be a bridleway or footway, the public are entitled to use the full width of it, though it may be a private way for carriages (*Pullen* v. *Deffel*, W. N. (1891), 39 ; 64 L. T. 134). But the presumption applicable to an ordinary public highway bounded by fences is not applicable to a public footpath which passes through a lane of irregular shape and of varying breadth between the fences. In such a case there is no presumption that the public right extends over the whole space between the fences (*Ford* v. *Harrow U. D. C.* (1903), 67 J. P. 248 ; 88 L. T. 394). Persons using a traction engine and trucks on a highway six hours daily for seven weeks cannot be

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow, upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard, on any footway (*y*), or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway (*z*) :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except

found guilty on indictment for a nuisance, unless they create a substantial obstruction and occasion delay and inconvenience to the public substantially greater than would have been caused by horses and carts (*R.* v. *Chittenden* (1885), 15 Cox, C. C. 725). This clause will not apply to a place like a mews, which is not a street, and is only dedicated to the public subject to certain restrictions arising from its use (*Vestry of Chelsea* v. *Stoddart* (1879), 43 J. P. 782). The cases decided with reference to the Highway Act, 1835, s. 72, should be referred to in illustration of this clause, and see *Nuttall* v. *Pickering*, [1913] 1 K. B. 14 ; 77 J. P. 30. As to claims to erect booths, etc. on highways during a fair, see *Simson* v. *Wells* (1872), 26 L. T. 163 ; a claim to expose goods for sale on market day, *R.* (*Kennedy*) v. *Cork County JJ.*, [1912] 2 I. R. 391 ; a claim by an innkeeper to allow his guest's carriage to remain in the highway, *Gerring* v. *Barfield* (1864), 28 J. P. 615 ; holding a fair on a highway, *Elwood* v. *Bullock* (1844), 6 Q. B. 383 ; *R.* v. *Smith* (1802), 4 Esp. 109. To allow trees to grow over a highway is not a wilful obstruction (*Walker* v. *Horner* (1876), 1 Q. B. D. 4 ; 39 J. P. 773). But any unreasonable and unnecessary use of a highway is an obstruction, *e.g.*, leaving a horse-van and ploughing gear standing by the side of a highway (*Harris* v. *Mobbs* (1878), 3 Ex. D. 268) ; or leaving a roller (*Wilkins* v. *Day* (1884), 12 Q. B. D. 110 ; 48 J. P. 6) ; or a motor car (*Macfarlane* v. *Colam*, [1908] S. C. 56) so as to frighten horses ; leaving a heap of earth and refuse by the side of a highway, so as to frighten horses (*Brown* v. *Eastern and Midlands Rail. Co.* (1889), 22 Q. B. D. 391 ; 53 J. P. 342). As to obstructions caused by the erection of barbed wire fences by the side of a highway, see 56 & 57 Vict. c. 32, *post*, p. 1882 ; *Stewart* v. *Wright* (1893), 9 T. L. R. 480 ; *Collen* v. *Ellis* (1893), 32 L. R. Ir. 491. As to the liability of a highway surveyor for leaving heaps of stones on a highway, see *Hardcastle* v. *Bielby* and the other cases cited, *ante*, p. 257.

As to the liability of a landowner whose soil slips from the banks upon the highway, see *Gully* v. *Smith* (1884), 12 Q. B. D. 121 ; 48 J. P. 309.

(*y*) There is sometimes a strip of land between the footway and the carriageway which is not dedicated to the public as part of the street. This clause would not affect the right to place goods, etc. upon it. See *Le Neve* v. *Mile End Old Town Vestry*, *ante*, p. 19 ; *R.* v. *Wigan JJ.* (1879), 43 J. P. 220 ; *Jones* v. *Matthews* (1884) 1 T. L. R. 482 ; *Hitchman* v. *Watt* (1894), 58 J. P. 720. But in general, if a person asserts the right to obstruct the way by virtue of a qualified education he must prove it. See *Spice* v. *Peacock* (1875), 39 J. P. 581 ; *Whittaker* v. *Rhodes* (1881), 46 J. P. 182 ; *Openshaw* v. *Pickering* (1913), 77 J. P. 27. But in such cases it is for the justices to determine whether or not the place is a street (*R.* v. *Young* (1882), 52 L. J. M. C. 55 ; 47 J. P. 519 ; *Leicester Sanitary Authority* v. *Holland*, *ante*, p. 1457). As to projections causing inconvenience to passengers, see the Towns Improvement Clauses Act, 1847, s. 69, *ante*, p. 1429 ; and compare the cases of *Wyatt* v. *Gems*, [1893] 2 Q. B. 225 ; 57 J. P. 665 ; and *Winsborrow* v. *London Joint Stock Bank* (1903), 67 J. P. 289 ; 88 L. T. 803. As to what are extenuating circumstances which will justify the dismissal of the summons, see *Dunning* v. *Trainer* (1909), 73 J. P. 400 ; 101 L. T. 421.

(*z*) As applied to costermongers there must be a real and substantial annoyance in fact in order to justify a conviction (*R.* v. *Francis* (1899), 69 L. J. Q. B. 609 ; 63 J. P. 469) ; and as to the meaning of the word costermonger, see *Baker* v. *Bradley* (1911), 33 M. C. C. 6.

for the purpose of loading or unloading any cart or carriage, or of crossing the footway (*a*):

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon (*b*):

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution (*c*):

Every person who wilfully and indecently exposes his person (*d*):

Every person who publicly offers for sale or distribution, or exhibits to public view any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language (*e*):

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework (*f*):

Every person who wilfully and wantonly disturbs any inhabitant, by pulling or ringing any door bell, or knocking at any door (*g*), or who wilfully and unlawfully extinguishes the light of any lamp:

Every person who flies any kite, or who makes or uses any slide upon ice or snow:

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime:

Every person who throws or lays down any stones, coals, slate, shells,

(*a*) As to the right of the occupier of premises to have free access to the highway for his goods, even though in taking these across the footway he injures it, see *St. Mary, Newington, Vestry* v. *Jacobs* (1871), L. R. 7 Q. B. 47; 36 J. P. 119. See also *Le Neve* v. *Mile End Old Town*, *ante*, p. 19; *Rowley* v. *Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97. Sometimes, however, a local Act forbids certain acts which interrupt the use of a footway, *e.g.*, unloading coal during certain hours. See *Fletcher* v. *Fields*, [1891] 1 Q. B. 790; 55 J. P. 502.

(*b*) An iron pole and a canvas flag hanging therefrom do not constitute a "sign" within the meaning of a local Act (*Goldstraw* v. *Jones* (1907), 71 J. P. 22; 96 L. T. 30).

(*c*) A similar clause in a Scotch Act was held not to apply to the case of a prostitute accosting men from the window of a house (*Ford* v. *Linton* (1879), 6 Ct. of Sess. Cas. (4th ser.) (J. C.) 49).

(*d*) Note that the offence here described must be committed in a street. But the offence may be the subject of indictment, though not committed in a public place (*R.* v. *Wellard* (1884), 14 Q. B. D. 63; 49 J. P. 296).

(*e*) Compare the provisions of the Vagrancy Act, 1824, ss. 3, 4. The 20 & 21 Vict. c. 83, contains other provisions to prevent the sale of obscene books, pictures, prints, and other articles. See *R.* v. *Hicklin* (1868), L. R. 3 Q. B. 360; *S. C. sub nom. R.* v. *Wolverhampton Recorder*, 18 L. T. 395; *Steele* v. *Brannan* (1872), L. R. 7 C. P. 264; 36 J. P. 676; *Scott* v. *Wolverhampton* (1868), 32 J. P. 533, as to what are obscene books, etc. See also the Indecent Advertisements Act, 1889.

A byelaw made under s. 46 of the Tramways Act, 1870, *post*, p. 1526, that no person shall swear or use obscene or offensive language whilst in or upon any carriage was held not *ultra vires* although this section was in force also in the same city (*Gentel* v. *Rapps*, [1902] 1 K. B. 160; 66 J. P. 117). A byelaw forbidding the use of indecent language in any street or public place to the annoyance of passengers cannot be held to apply to such language used in a public house and heard only by persons present therein (*Russon* v. *Dutton* (*No.* 2) (1911), 75 J. P. 209; 104 L. T. 601).

(*f*) This is practically abrogated as to fireworks by 38 & 39 Vict. c. 17, s. 80. See as to blasting in a quarry (*Murray* v. *Keith* (1895), 22 Ct. of Sess. Cas. (4th ser.) (J. C.) 17). A person may also be indicted at common law or under 2 Edw. 3, c. 3, for going about armed (*R.* v. *Meade* (1903), 19 T. L. R. 540).

(*g*) The mere fact of a man being instructed to deliver papers at a house is no answer to a complaint under this clause if the ringing, etc. is violent and at an unreasonable hour of the night (*Clarke* v. *Hoggins* (1862), 11 C. B. (N.S.) 545). By s. 1 of the Chimney Sweepers Act, 1894, any person who shall for the purpose of soliciting employment as a chimney sweeper knock at the houses from door to door, or ring a bell, or use any noisy instrument, or to the annoyance of any inhabitant thereof ring the door bell of any house, or cause anyone to do any of the acts aforesaid, shall be liable on summary conviction to a penalty not exceeding ten shillings for the first offence, and to a penalty not exceeding twenty shillings for any subsequent offence.

lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers) (*h*):

Every person who beats or shakes any carpet, rug, or mat (except door mats beaten or shaken before the hour of eight in the morning):

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down:

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger:

Every occupier of any house or other building, or other person, who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story:

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer, without a sufficient light after sunset to warn and prevent persons from falling thereinto (*hh*):

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill, into any street (*i*): Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases:

Every person who keeps any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance (*k*).

Penalty on drunken persons, etc. guilty of riotous or indecent behaviour.

29. Every person drunk in any street, and guilty of any riotous or indecent (*l*) behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police-station house, within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days (*m*).

Fires.

And with respect to fires, be it enacted as follows:

Penalty for wilfully setting chimneys on fire.

30. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act, shall be liable to a penalty not exceeding

(*h*) A claim of right does not necessarily oust jurisdiction under this section, for the court has to decide as a fact whether the place is a street (*R.* v. *Young*, *ante*, p. 1458).

(*hh*) See the cases collected in note (*z*), *ante*, p. 1430.

(*i*) This must be within the urban district. See *Flight* v. *Clarke* (1844), 13 M. & W. 155. "Litter" includes handbills scattered about the street (*Hills* v. *Davies* (1903), 67 J. P. 198; 88 L. T. 464). As to laying rubble on a highway contrary to the Highway Act, 1835, s. 72, see *Smith* v. *Perry*, [1906] 1 K. B. 262; 70 J. P. 93.

(*k*) See also the P. H. A., 1875, ss. 44, 47, *ante*, pp. 111, 114.

(*l*) See note (*c*) to s. 28, *ante*, p. 1459.

(*m*) Where a charge is made under this clause, and the justices do not find that the defendant has been guilty of riotous conduct in a street, they cannot convict of simple drunkenness (*Martin* v. *Pridgeon* (1859), 1 El. & El. 778; 28 L. J. M. C. 179). See also the Licensing Act, 1872, s. 12, and the Licensing Act, 1902, ss. 1—3.

five pounds: Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

31. If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding ten shillings: Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission, neglect, or carelessness of himself or servant (*n*). Penalty for accidentally allowing chimneys to catch fire.

32. The commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines, as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire, as they think fit (*o*). Commissioners may provide fire engines and firemen.

(*n*) The occupier has not, as in London under s. 25 of the Metropolitan Fire Brigade Act, 1865, any remedy over against the servant or other person by whose wilful neglect or default the chimney caught fire. See, generally, as to chimneys on fire, 61 J. P. 179.

(*o*) As to building a fire engine station in disregard of restrictive conditions of sale of neighbouring superfluous plots, see *Holford* v. *Acton U. D. C.*, [1898] 2 Ch. 240. A fire brigade established by an urban authority under this section and s. 171 of the P. H. A., 1875, may exclude from the premises on fire and their immediate neighbourhood all persons whose presence would interfere with their operations (*Carter* v. *Thomas*, [1893] 1 Q. B. 673; 57 J. P. 438). A boy was invited by the defendants' firemen to assist in pulling a fire engine, and in so assisting was injured. It was held that the doctrine of common employment applied, and judgment was entered for the defendants (*Bass* v. *Hendon U. D. C.* (1911), 76 J. P. 13; 28 T. L. R. 317). In places where Part VIII. of the P. H. A., 1907, is in force s. 87 empowers constables to break open premises in case of fire; s. 88 empowers the police to control street traffic; and s. 89 gives the captain of the fire brigade the control of the operations for extinguishing the fire. The superintendent of an urban district fire brigade established under this section has implied authority to call in the assistance of the brigade of an adjoining district in case of necessity, and he will thereby render the council of his own district liable to pay for the services of the brigade so called in (*James* v. *Staines U. D. C.* (1900), 83 L. T. 426; 17 T. L. R. 2), but in places where Part VIII. of the P. H. A., 1907, is in force local authorities may, under s. 90 of that Act, make agreements for the common use of fire appliances. As to false alarms of fire, see 58 & 59 Vict. c. 28.

As to the delegation of its powers under this and the following section by a borough council to a watch committee, see the Police Act, 1893, s. 2, *post*, p. 1879.

An urban district council may borrow for the provision of fire engines, fire stations, etc., under ss. 233, 234 of the P. H. A., 1875, *ante*, pp. 519—531. Any application to the L. G. B. for sanction to a loan should be made by resolution of the council, of which a copy should be forwarded by the clerk, with a statement showing how the amount proposed to be borrowed is made up, plans of any buildings, a specification of the articles to be purchased, and financial particulars of the district (in a form supplied). It is well also to forward a certificate that any buildings proposed will comply with the byelaws in force, and to explain what arrangements have been made for a site. Local inquiries are not usually directed for this purpose alone, unless this is a statutory requirement in consequence of the indebtedness of the district. See s. 234 (3) of the Act of 1875.

The terms for repayment allowed by the L. G. B. are: For buildings, thirty years; for fire engines and appliances, ten years. The Board do not allow money to be borrowed for firemen's uniforms. They are also unwilling to sanction loans for the purchase of *manual* fire engines unless the district is a small one.

Fire alarms and telephonic apparatus may be provided, but in some cases the L. G. B. require the urban district council to ascertain whether any licence from the Postmaster-General is required to the scheme proposed.

An urban district council was desirous of providing cottages for their firemen, which, being some distance from the fire station, would be fitted with fire alarms or telephones, and applied to the L. G. B. for sanction to a loan for the purpose of erecting these cottages. The Board stated that they were advised that it is not within the powers of the council

Commissioners may send engines and firemen beyond the limits of the special Act.

33. The commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits; and the owner (*p*) of the lands

to provide such cottages apart from the fire station, and that they were therefore unable to accede to the application.

If, however, it can be shown that cottages which a council propose to purchase or build are in such close connection with a fire brigade station that the accommodation can be considered to be part of a place for keeping an engine with the appurtenances within the meaning of s. 32 of the Act of 1847, the L. G. B. have expressed their willingness to entertain an application for sanction to a loan.

Urban district councils may combine for the provision of fire engines under s. 285 of the P. H. A., 1875, and s. 57 of the L. G. A., 1894; and in reply to an inquiry addressed to them on the subject, the L. G. B. have stated that they are disposed to consider that under the former Act an urban district council may enter into an agreement with a neighbouring urban district council under which the former council will acquire a right to the services of the latter council's fire brigade and to the use of the brigade's apparatus on such terms and conditions as are specified in the agreement, including a reasonable payment for the right thereby acquired.

The Board have stated that they are not aware of any lawful authority by which an urban district council may make a contribution to the expenses of a *volunteer* fire brigade.

In a case in which the advice of the Board was sought as to the liability of a district council to the members of a so-called volunteer fire brigade under the Workmen's Compensation Act, 1906, the Board stated that they considered that there was some evidence of a contract of service between the council and brigade, but that they could not undertake to define the council's legal position under the Act.

A district council cannot pay the premiums for insurance against accidents of the members of a fire brigade unless such members are engaged by the council.

An urban district council proposed to discontinue the payment of premiums on fire insurance policies and to form a sinking fund for the purpose of insuring the buildings of the council against fire. The L. G. B., whose opinion was sought in the matter, expressed the view that any such change of practice as that contemplated by the council would be very inexpedient. The Board observed that it appeared to them that the council are in the position of trustees of public property, and that they should not neglect the usual and proper precaution of insuring against damage or destruction by fire. Moreover, the Board were not aware of any statutory authority empowering the council to create and administer an insurance fund of the kind referred to, and they thought it very doubtful whether the council had power to adopt the course suggested.

The powers of an urban district council with respect to fires may be conferred upon a rural district council by Order of the L. G. B. under s. 276 of the P. H. A., 1875, *ante*, p. 609. A council desiring such an Order should apply by resolution, of which a copy should be forwarded by the clerk, with full information as to the arrangements contemplated. In view of the fact that action may be taken parochially for the provision of fire-extinguishing plant (see note (*p*)), the Board do not confer the powers in respect of whole rural districts or aggregations of rural parishes without inquiring what action has been taken under these enactments. They consider it undesirable that there should be two *fire* authorities at the same time in the same parish. The condition of each parish as to water supply must also be stated.

It is not essential that a rural district council should propose to purchase fire engines and equip a fire brigade. They may arrange for the use of the engine belonging to a neighbouring urban district council, but the Board would not declare the provisions of ss. 30—33 of the Act of 1847 to be in force in the rural district unless a binding arrangement was entered into entitling the rural area to the use of the fire engine and the services of the brigade whenever required. It is important to remember that in such a case the urban district council cannot make a charge under s. 33, *supra*. The fire engine, when in the rural area, must be regarded as provided by the rural district council. The Board usually insert in such Orders a provision that the expenses incurred shall be chargeable as special expenses.

A local authority using motor spirit for supplying motive power to any motor fire engine provided by them, or to any motor car kept by them while it is being used by them for the purposes of their fire brigade service, are entitled to an allowance or repayment of the duty paid in respect of the motor spirit: see Finance (1909-10) Act, 1910, s. 85; Finance Act, 1911, s. 12. No excise licence duty is payable under s. 86 of the Finance (1909-10) Act, 1910, in respect of any motor fire engine (*ibid.*, s. 86 (6)), or any motor car used by any local authority for fire brigade purposes (Finance Act, 1911, s. 11).

As to personal injuries sustained by a pedestrian by being knocked down by a fire engine, see *Scudder* v. *London C. C.*, (1909) 31 M. C. C. 365; Times, July 15th, 1909.

(*p*) The owner of a stack of hay standing on ground which he *occupied* was held to be within these words (*Lewis* v. *Arnold* (1875), L. R. 10 Q. B. 245; 39 J. P. 294, 519). But

or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen (*q*); and in case of any difference between the commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines and firemen as aforesaid for extinguishing such fire, (if the propriety thereof be disputed,) shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the commissioners as damages.

And with respect to places of public resort, be it enacted as follows (*r*): *Places of public resort.*

34. Every victualler or keeper of any public-house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors, by — Penalty on victuallers, etc. harbouring constables while on duty.

the decision has been overruled, and it has been held that the "owner" means the owner as defined by s. 4 of the P. H. A., 1875 (*Sale* v. *Phillips*, [1894] 1 Q. B. 349; 58 J. P. 460). By the Parish Fire Engines Act, 1898, s. 1 (1), the power of a parish council under s. 29 of the Poor Law Amendment Act, 1867, or s. 44 of the Lighting and Watching Act, 1833, as respectively amended by ss. 6 and 7 of the L. G. A., 1894, to provide a fire engine for their parish shall include power to agree with the council of any neighbouring borough or district that any fire engines with their appurtenances and firemen provided by the council of that borough or district shall be used for extinguishing fires in the parish. And by s. 1 (2), where a fire engine is sent beyond the limits of a borough or district in pursuance of any such agreement, the owner of the lands or buildings where the fire occurred shall not by reason thereof be liable for any expense or charge under s. 33 of the Town Police Clauses Act, 1847. In the case of a combination of district councils for the provision of a fire engine, a charge for use can only be made outside the districts in respect of which the combination is made. See also s. 90 of the P. H. A., 1907, referred to in the preceding note. As to the liability of the council within whose district the fire takes place, when firemen are sent from outside, see *R.* v. *Part*, (1906) 70 J. P. 398.

(*q*) This provision impliedly negatives the right to charge for engines and apparatus when employed within the district (*Bridlington L. B.* v. *Bower* (1874), 38 J. P. 73; 22 W. R. 165).

(*r*) Reference may be made to the provisions of the Refreshment Houses Act, 1860, as to refreshment houses, and of the Licensing Acts as to the prevention of offences against public order by drunkenness in the highways and disorderly conduct in licensed houses; also to the Gaming Act, 1845, and the Licensing Act, 1872, s. 75, as to public billiard rooms; the Gaming Act, 1845, and the Betting Act, 1853, as to gaming and betting houses. The following is a list of cases decided under the various statutes containing similar provisions and also those decided under byelaws made pursuant to the Municipal Corporations Acts and other statutes dealing with good rule and government: *Hall* v. *MacWilliam* (lottery advertised in newspaper) (1901), 65 J. P. 742; 85 L. T. 239, decided under the Lotteries Act, 1823; *Bows* v. *Fenwick* (1874), L. R. 9 C. P. 339; 38 J. P. 440; *Galloway* v. *Maries* (1882), 8 Q. B. D. 275; 46 J. P. 326; *Henretty* v. *Hart* (1885), 13 Ct. of Sess. Cas. (4th ser.) (J.) 9; *Hawke* v. *Dunn*, [1897] 1 Q. B. 579; 61 J. P. 292; *Brown* v. *Patch*, [1899] 1 Q. B. 892; 63 J. P. 421; *Powell* v. *Kempton Park Racecourse Co.*, [1899] A. C. 143; 63 J. P. 260 (racecourse cases); *Haigh* v. *Sheffield Corporation* (1874), L. R. 10 Q. B. 102; 39 J. P. 230 (athletic ground); *Eastwood* v. *Miller* (1874), L. R. 9 Q. B. 440; 38 J. P. 647 (pigeon shooting match); *Oldham* v. *Ramsden* (1875), 44 L. J. C. P. 309; 39 J. P. 583; *Downes* v. *Johnson*, [1895] 2 Q. B. 203; 59 J. P. 487 (clubs); *R.* v. *Cook* (1884), 13 Q. B. D. 377; 48 J. P. 337 (bicycle races); *Snow* v. *Hill* (1885), 14 Q. B. D. 588; 49 J. P. 440; *Snow* v. *Harris* (1884), 1 T. L. R. 325 (dog races); *Sims* v. *Pay* (1889), 58 L. J. M. C. 39; 53 J. P. 420; *Davis* v. *Stephenson* (1890), 24 Q. B. D. 529; 54 J. P. 565; *Hornsby* v. *Raggett*, [1892] 1 Q. B. 20; 56 J. P. 135; *McWilliam* v. *Dawson* (1892), 56 J. P. 182; *R.* v. *Preedy* (1887), 17 Cox, C. C. 433; *R.* v. *Worton*, [1895] 1 Q. B. 227; *Bradford* v. *Dawson*, [1897] 1 Q. B. 307; 61 J. P. 134; *Belton* v. *Busby*, [1899] 2 Q. B. 380; 63 J. P. 709; *Tromans* v. *Hodkinson*, [1903] 1 K. B. 30; 67 J. P. 30; *Buxton* v. *Scott* (1909), 73 J. P. 133; 100 L. T. 390 (public-house cases); *Liddell* v. *Lofthouse*, [1896] 1 Q. B. 295; 60 J. P. 264; *McInaney* v. *Hildreth*, [1897] 1 Q. B. 600; 61 J. P. 325 (waste ground cases); *Bond* v. *Plumb*, [1894] 1 Q. B. 169; 58 J. P. 168; *Davis* v. *Stoddart*, [1902] 2 K. B. 21; 66 J. P. 469; *Gordon* v. *Chief Commissioner of Metropolitan Police*, [1910] 2 K. B. 1080; 74 J. P. 437; *R.* v. *Mortimer*, [1911] 1 K. B. 70; 75 J. P. 37 (private house cases); *Stoddart* v. *Sagar*, [1895] 2 Q. B. 474; 59 J. P. 598; *Hawke* v. *Mackenzie*, [1902] 2 K. B. 225; 61 J. P. 709 (coupon competitions); *R.* v. *Humphrey*, [1898] 1 Q. B. 875; 62 J. P. 409 (private road); *Cox* v. *Andrews* (1884), 12 Q. B. D. 126; 48 J. P. 247

retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public-house or place wherein he carries on his business any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall, for every such offence, be liable to a penalty not exceeding twenty shillings (*s*).

Penalty on coffee-shop keepers, &c. harbouring disorderly persons.

35. Every person keeping any house, shop, room, or other place of public resort, within the limits of the special Act, for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises shall, for every such offence, be liable to a penalty not exceeding five pounds (*t*).

Penalty on persons keeping places for bear-baiting, cock-fighting, etc.

36. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place, for the purpose of fighting, baiting, or worrying any animal shall be liable to a penalty of not more than five pounds, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month; and the commissioners may, by order in writing, authorise the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and

(newspaper advertisement); *R.* v. *Brown*, [1895] 1 Q. B. 119; 59 J. P. 435 (telegrams); *R.* v. *Hobbs*, [1898] 2 Q. B. 647; 62 J. P. 551 (sweepstake); and *Stoddart* v. *Hawke*, [1902] 1 K. B. 353; 66 J. P. 68 (receipt of money outside the United Kingdom), all decided under the Betting Act, 1853.

The following cases were decided under the Gaming Act, 1854:—*Jenks* v. *Turpin* (1884), 13 Q. B. D. 585; 49 J. P. 20; *Derby* v. *Bloomfield* (1903), 68 J. P. 391; 91 L. T. 99; (clubs); *R.* v. *Davies*, [1897] 2 Q. B. 199 (private house); *Thompson* v. *Mason* (1903), 68 J. P. 270; 90 L. T. 649; *Roberts* v. *Harrison*, [1909] W. N. 163; 73 J. P. 439; *Pessers, Moody, Wraith and Curr, Ltd.* v. *Catt* (1913), 77 J. P. 429; 29 T. L. R. 381 (slot machines); and *Morris* v. *Godfrey* (1912), 76 J. P. 297; 106 L. T. 890 (whist drive).

For cases decided under the Licensing Act, 1872, see *Bond* v. *Evans* (1888), 21 Q. B. D. 249; 52 J. P. 613 (skittle alley), and *Dyson* v. *Mason* (1889), 22 Q. B. D. 351; 53 J. P. 262 (skittle pool); and under the Betting Act, 1874, *Hawke* v. *Mackenzie*, *supra*. See also *Stead* v. *Aykroyd*, [1911] 1 K. B. 57; 74 J. P. 482 (racecourse) decided under the Street Betting Act, 1906, and *Taylor* v. *Wilson* (1911), 76 J. P. 69; 106 L. T. 44 (public-house), decided under the Licensing (Consolidation) Act, 1910.

For cases decided under the Vagrancy Acts, 1868 and 1873, see *Tollett* v. *Thomas* (1871), L. R. 6 Q. B. 514; 35 J. P. 359; *Lester* v. *Quested* (1901), 66 J. P. 54; 85 L. T. 487 (games of chance); and *Langrish* v. *Archer* (1883), 10 Q. B. D. 44; 47 J. P. 295 (railway carriage).

Reference may be made to the following cases decided under byelaws dealing with streets and public places:—*Burnett* v. *Berry*, [1896] 1 Q. B. 641; 60 J. P. 375; *Godwin* v. *Walker* (1896), 12 T. L. R. 367; 60 J. P. 308; *Jones* v. *Walters* (1898), 62 J. P. 374; 78 L. T. 167; *Kitson* v. *Ashe*, [1899] 1 Q. B. 425; 63 J. P. 325; *White* v. *Morley*, [1899] 2 Q. B. 34; 63 J. P. 550; *Thomas* v. *Sutters*, [1900] 1 Ch. 10; 63 J. P. 724; *Hickey* v. *Hay* (1900), 65 J. P. 232; *Slowey* v. *Threshie* (1901), 3 F. (J.) 73; *Airton* v. *Scott* (1909), 73 J. P. 148; 100 L. T. 393.

(*s*) A similar clause is contained in the Licensing (Consolidation) Act, 1910, s. 78, as to which see *Mullins* v. *Collins* (1874), L. R. 9 Q. B. 292; 38 J. P. 629; *Somerset* v. *Hart* (1884), 12 Q. B. D. 360; 48 J. P. 327; *Newman* v. *Jones* (1886), 17 Q. B. D. 132; 50 J. P. 373; *Sherras* v. *De Rutzen*, [1895] 1 Q. B. 918; 59 J. P. 440.

(*t*) See s. 76 of the Licensing (Consolidation) Act, 1910, and s. 10 of the Prevention of Crimes Act, 1871. The keeper of a licensed alehouse is not exempt from the operation of this clause (*Cole* v. *Coulton* (1860), 24 J. P. 596; 2 El. & El. 695). It is not unlawful to supply prostitutes, etc. with refreshments, nor does the mere doing so amount to permitting them to assemble. See *Greig* v. *Bendeno* (1858), El. B. & E. 133; 27 L. J. M. C. 294; *Purkis* v. *Huxtable* (1859), 1 El. & El. 780; 28 L. J. M. C. 221; *Whitfield* v. *Bainbridge* (1866), 30 J. P. 644; *Parker* v. *Green* (1862), 26 J. P. 247; 2 B. & S. 299; *Belasco* v. *Hannant* (1862), 26 J. P. 823; 2 B. & S. 13; *Wilson* v. *Stuart* (1863), 27 J. P. 661; 3 B. & S. 913; *Cole* v. *Coulton*, *supra*. A meeting to get up a subscription for a convicted thief's family, several thieves being in the company, is an assembly of thieves such as is forbidden by the Prevention of Crimes Act, 1871, s. 10, and presumably by this section (*Marshall* v. *Fox* (1871), L. R. 6 Q. B. 370; 35 J. P. 631).

every person so found shall be liable to a penalty not exceeding five shillings, and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned (*u*).

And with respect to hackney carriages, be it enacted as follows (*x*): *Hackney carriages.*

37. The commissioners may from time to time licence (*y*) to ply for hire within the prescribed distance (*z*), or if no distance is prescribed, within five miles from the general post office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) such number of hackney coaches or carriages of any kind or description (*a*) adapted to the carriage of persons as they think fit. Commissioners may licence hackney carriages.

38. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance (*b*), and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special What vehicles to be deemed hackney carriages.

(*u*) See generally as to cruelty to animals, the Protection of Animals Act, 1911; and as to "baiting," see *Pitts* v. *Millar* (1874), L. R. 9 Q. B. 380; 38 J. P. 615.

(*x*) See also as to tramcars and their drivers, conductors, etc., 33 & 34 Vict. c. 78, s. 48, *post*, p. 1528. The provisions of this part of the Act, as contained in ss. 37, 40, 52, 54, 58, 60—67, are now applied to omnibuses by 52 & 53 Vict. c. 14, s. 4, *post*, p. 1841.

(*y*) The possession of a revenue licence to let horses and carriages under 2 & 3 Will. 4, c. 120, was held not to supersede the necessity of the proprietor of a hackney carriage having a licence under this Act (*Buckle* v. *Wrightson* (1865), 29 J. P. 326; 5 B. & S. 854). The commissioners may require an applicant for a licence to attend in person (*Banton* v. *Davies* (1892), 56 J. P. 294; 65 L. T. 192). The commissioners have a discretion to refuse the licence. See *Ex parte Mitcham* (1865), 5 B. & S. 585; 33 L. J. Q. B. 325; *R.* v. *Barry U. D. C.* (1900), 16 T. L. R. 565. But as to the metropolis see (*R.* v. *Metropolitan Police Commissioner, Ex parte Holloway*, [1911] 2 K. B. 1131; 75 J. P. 490, a decision which overrules *R.* v. *Metropolitan Police Commissioner, Ex parte Pearce* (1911), 80 L. J. K. B. 223; 75 J. P. 85). In the case of *R.* v. *Metropolitan Police Commissioner, Ex parte Randall* (1911), 75 J. P. 486; 27 T. L. R. 505, the court followed *R.* v. *Metropolitan Police Commissioner, Ex parte Pearce, supra*, which had not at that time been overruled. As to the discretion of the licensing authority where they have themselves a competing tramway, see *R.* v. *Blackpool Corporation* (1899), 63 J. P. 787; 21 M. C. C. 572.

(*z*) That is, within the urban district. See s. 171 of the P. H. A., 1875, *ante*, p. 392.

(*a*) As to tramcars, see 33 & 34 Vict. c. 78, s. 48, *post*, p. 1528, and as to omnibuses, see 52 & 53 Vict. c. 14, s. 4 (1), *post*, p. 1841. A carriage similar to a tramcar and used to carry passengers at separate fares over a light railway by virtue of Provisional Orders made under the Light Railways Act, 1896, is not a hackney carriage within the meaning of the Town Police Clauses Act, 1847 (*Yorkshire* (*Woollen District*) *Electric Tramways, Ltd.* v. *Ellis*, [1905] 1 K. B. 396; 69 J. P. 67).

(*b*) A hackney carriage while on the premises of a railway company, by their leave for the accommodation of passengers by their trains, is not plying for hire *in a street*; the stations are private property (*Case* v. *Storey* (1868), L. R. 4 Ex. 319; 33 J. P. 470; and see *Hole* v. *Digby* (1879), 27 W. R. 884). But the dictum of KELLY, C.B., in that case, that they were not then *plying for hire* in that they were not at the disposal of the public, was not followed in *Clarke* v. *Stanford* (1871), L. R. 6 Q. B. 357; 35 J. P. 662; and in *Allen* v. *Tunbridge* (1871), L. R. 6 C. P. 481; 35 J. P. 695, it was held that a brougham, the owner of which, by agreement with a railway company, attended at their station to await the arrival of trains for the conveyance of any passenger who chose to use it, and whose driver solicited passengers, was a hackney carriage, *plying for hire*. And see *Foinett* v. *Clarke* (1877), 41 J. P. 359. Where the owner of omnibuses being refused a licence ran them regularly over the route for the use of the public free of charge, but with a box in each omnibus for voluntary contributions, the conductor being ready to give change if asked, it was held that the omnibuses were plying for hire (*Cocks* v. *Mayner* (1894), 58 J. P. 104; 70 L. T. 403). Plying for hire in an open unenclosed piece of private ground to which the public have access, but over which there is no public right of way, is not plying for hire in a *street* (*Skinner* v. *Usher* (1872), L. R. 7 Q. B. 423). A piece of ground adjoining a railway station, and belonging to the company, metalled and separated from the street only by a gutter, was used as an approach to the station. Private carriages were allowed to stand there, but no hackney carriages, except those of the appellant, who

Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act (*c*); and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage: Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act (*d*).

Proviso as to stage coaches.

Fee to be paid for licence.

39. For every such licence there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding five shillings (*e*).

Persons applying for licence to sign a requisition.

40. Before any such licence is granted a requisition for the same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney carriage (*f*) in respect of which such licence is applied for; and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such licence, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage; and any person who, on applying for such licence, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, shall be liable to a penalty not exceeding ten pounds.

Penalty for omissions, etc. in requisition.

What shall be specified in the licences.

41. In every such licence shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping,

had, by agreement with the company, the sole right of standing carriages there :—*Held*, that the plying for hire there was not plying for hire in a street (*Curtis* v. *Embery* (1872), L. R. 7 Ex. 369). In the city of E. was a square in front of a hotel, unenclosed, and where the public could pass freely, except when the hotel keeper's carriages stood there. The square was let with the hotel, and was used for the hotel cabs when plying for hire :—*Held*, that the square was part of the street (*Marks* v. *Ford* (1881), 45 J. P. 157). The words "used in standing or plying for hire" indicate the period of time during which a carriage is to be deemed a hackney carriage, and are not limited to the period during which it is actually standing or plying for hire in a street. Therefore, in executing a booked order, even if the number plate is covered up, the carriage does not cease to be a hackney carriage within the meaning of the Act, and the byelaws under s. 68 are still applicable to it (*Hawkins* v. *Edwards*, [1901] 2 K. B. 169; 65 J. P. 523).

(*c*) As to what is a hackney carriage apart from any statutory definition, see *Bateson* v. *Oddy* (1874), 43 L. J. M. C. 131; 38 J. P. 598. By s. 1 (1) (b) of 59 & 60 Vict. c. 36, a light locomotive may be a hackney carriage if in other respects it would come within this section. See *ante*, p. 779.

(*d*) The proviso was held to apply to an omnibus (*Cousins* v. *Stockbridge* (1866), 30 J. P. 166). The licence here referred to was an excise licence, now abolished by 32 & 33 Vict. c. 14. But though no licence can now be obtained the law officers of the Crown had advised that the exemption remained. But see now the provisions of the Town Police Clauses Act, 1889, *post*, p. 1840. An ordinary omnibus running along a fixed route was held to be a hackney carriage within the meaning of 51 Vict. c. 8, s. 4 (*Hickman* v. *Birch* (1889), 24 Q. B. D. 172; 54 J. P. 406).

(*e*) As to the excise duty payable for hackney carriage licences, see 47 & 48 Vict. c. 25, s. 3.

(*f*) This includes a tramcar (see 33 & 34 Vict. c. 78, s. 48, *post*, p. 1528), and an omnibus (52 & 53 Vict. c. 14, s. 4 (1), *post*, p. 1841), but not a light railway car, see note (*a*), *ante*, p. 1465.

employing, or letting to hire of any such carriage, and also the number of such licence which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

42. Every licence shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that purpose; and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage; and any person may at any reasonable time inspect such book, without fee or reward. Licences to be registered.

43. Every licence so to be granted shall be under the common seal of the commissioners, if incorporated, or, if not incorporated, shall be signed by two or more of the commissioners, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such licence, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners (*g*). Licence to be in force for one year only.

44. So often as any person named in any such licence as the proprietor or one of the proprietors, or as being concerned, either solely or in partnership with any person, in the keeping (*h*), employing, or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such change, give notice thereof in writing, signed by him, to the commissioners, specifying in such notice his new place of abode; and he shall at the same time produce such licence at the office of the commissioners, who shall by their clerk or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change; and any person named in any such licence as aforesaid as the proprietor, or one of the proprietors, of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode and neglects or wilfully omits to give notice of such change, or to produce such licence in order that such memorandum as aforesaid may be endorsed thereon, within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings. Notice to be given by proprietors of hackney carriages of any change of abode.

45. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a licence as aforesaid for such carriage, or during the time that such licence is suspended as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance for which such licence as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the licence openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings (*i*). Penalty for plying for hire without a licence.

(*g*) The licence may be for less than a year (52 & 53 Vict. c. 14, s. 5, *post*, p. 1841).

(*h*) For the meaning of this word as used in the Customs and Inland Revenue Act, 1869, s. 27, see *London C. C.* v. *Fairbank*, [1911] 2 K. B. 32; 75 J. P. 356.

(*i*) A person plying for hire with a licensed carriage cannot be convicted if in the course of such plying for hire he obtains a private contract for the hire of an unlicensed carriage (*Cavill* v. *Amos* (1900), 64 J. P. 309).

A railway company provided a cab-stand upon a piece of ground which was their private property subject to a public right of footway alongside which it was metalled and paved like an ordinary street, and formed the side approach to one of their stations:—*Held* (1) that the piece of ground was not a "street" within the meaning of s. 3 of this Act; and (2) that the driver of a carriage for which a licence had not been obtained by standing for hire upon the cab-stand, which was within the district, committed no offence against the latter part of s. 45 (*Jones* v. *Short* (1900), 69 L. J. Q. B. 473; 64 J. P. 247).

It was provided in a local Act that if the driver of any hackney carriage "shall be found standing or plying for hire" within the limits of the Act without a licence he should be liable to a penalty. There was no definition of "hackney carriage" in the Act. It was

Drivers not to act without first obtaining a licence.

46. No person shall act as driver (*k*) of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a licence from the commissioners, which licence shall be registered by the clerk to the commissioners, and a fee of one shilling shall be paid for the same; and every such licence shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned (*l*).

Penalty on drivers acting without licence, or proprietors employing unlicensed drivers.

47. If any person acts as such driver (*k*) as aforesaid without having obtained such licence, or during the time that his licence is suspended, or if he lend or part with his licence, except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such licence, or during the time that his licence is suspended, as hereinafter provided, every such driver and every such proprietor shall for every such offence respectively be liable to a penalty not exceeding twenty shillings.

Proprietor to retain licences of drivers, and to produce the same before justices on complaint.

48. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the licence of such driver, while such driver remains in his employ; and in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the licence of such driver, if he be then in his employ; and if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the licence of such driver, stating the nature of the offence and the amount of the penalty inflicted; and if any such proprietor neglect to have delivered to him and to retain in his possession the licence of any driver while such driver remains in his employ, or if he refuse or neglect to produce such licence as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding forty shillings.

Proprietor to return licence to drivers except in case of misconduct.

49. When any driver (*k*) leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the licence belonging to him (*n*); but if such driver have been guilty of any misconduct, the proprietor shall not return his licence, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice, having

held that the words "hackney carriage" must be taken to mean a carriage exposed for hire to the public, whether standing in the public street or in a private yard (*Bateson* v. *Oddy* (1874), 43 L. J. M. C. 131; 30 L. T. 712). This case was cited in *Jones* v. *Short*, *supra*.

A carriage similar to a tramcar and used to carry passengers at separate fares over a light railway by virtue of Provisional Orders made under the Light Railways Act, 1896, is not a hackney carriage within the meaning of this section (*Yorkshire* (*Woollen District*) *Electric Tramways, Ltd.* v. *Ellis*, [1905] 1 K. B. 396; 69 J. P. 67). See also the Town Police Clauses Act, 1889, s. 3, *post*, p. 1840.

(*k*) This includes the conductor of a tramcar (33 & 34 Vict. c. 78, s. 48, *post*, p. 1528), and of an omnibus (52 & 53 Vict. c. 14, s. 4 (2), *post*, p. 1841).

(*l*) The licence of the driver is only to be in force for one year. See the P. H. A., 1875, s. 171, *ante*, p. 392. The commissioners have a discretion as to granting a licence which must be properly exercised (*R.* v. *Barry U. D. C.* (1900), 16 T. L. R. 565). And they may require applicants to attend in person (*Banton* v. *Davies*, *ante*, p. 1465).

(*n*) As to marking the licence, see *Hurrell* v. *Ellis* (1845), 2 C. B. 265; 15 L. J. C. P. 18; *Rogers* v. *Macnamara* (1853), 14 C. B. 27; 23 L. J. C. P. 1; *Norris* v. *Birch*, [1895] 1 Q. B. 639.

the necessary parties before him, shall inquire into and determine the matter of complaint, and if upon inquiry it appear that the licence of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such licence, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation.

50. The commissioners may, upon the conviction for the second time of the proprietor or driver (*o*) of any such hackney carriage for any offence under the provisions of this or the special Act, with respect to hackney carriages, or any byelaw made in pursuance thereof, suspend or revoke, as they deem right, the licence of any such proprietor or driver. Revocation of licences of proprietors or drivers.

51. No hackney carriage (*p*) shall be used or employed or let to hire, or shall stand or ply for hire, within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in form following, (that is to say,) " To carry persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth; and the driver (*o*) of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon. Number of persons to be carried in a hackney carriage to be painted thereon.

52. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver (*o*) of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding forty shillings. Penalty for neglect to exhibit the number, or for refusal to carry the prescribed number.

53. A driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse (*q*), to drive such carriage to any place (*r*) within the prescribed distance, or the distance to be appointed by any byelaw of the commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such carriage, shall for every such offence be liable to a penalty not exceeding forty shillings. Penalty on driver for refusing to drive.

54. If the proprietor or driver of any such hackney carriage (*s*), or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare (*t*) allowed by this or the special Act, or any byelaw made thereunder, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if he exact or demand for such job more than the fare so agreed upon. Penalty for demanding more than the sum agreed for.

(*o*) This includes the conductor of a tramcar (33 & 34 Vict. c. 78, s. 48, *post*, p. 1528), and of an omnibus (52 & 53 Vict. c. 14, s. 4 (2), *post*, p. 1841).

(*p*) See note (*f*), *ante*, p. 1466, and *Black* v. *Neilson*, cited in the note to s. 34 of the Tramways Act, 1870, *post*, p. 1520.

(*q*) The driver may refuse to carry persons suffering from infectious disease. See the P. H. A., 1875, s. 127, *ante*, p. 231; and in places where Part IV. of the P. H. A., 1907, is in force, ss. 63 and 64 of that Act contain additional provisions on the subject. See also 53 & 54 Vict. c. 34, s. 11, *ante*, p. 814, as to the disinfection of public conveyances after carrying corpses.

(*r*) Place here means any place to which the driver can get admittance, although it is private property (*Ex parte Kippins*, [1897] 1 Q. B. 1; 60 J. P. 791).

(*s*) As to omnibuses and conductors of omnibuses, see 52 & 53 Vict. c. 14, s. 4 (1), (2), *post*, p. 1841.

(*t*) As to omnibus fares, see 52 & 53 Vict. c. 14, s. 4 (3), *post*, p. 1841.

Agreement to pay more than the legal fare.

55. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any byelaw made under this or the special Act, shall be binding on the person making the same; and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid: and if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of forty shillings; and in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Agreements to carry passengers a discretionary distance for a fixed sum.

56. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon, according to the fare allowed by this or the special Act, or any byelaw made in pursuance thereof.

Deposit to be made for carriages required to wait.

57. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the byelaws, then the sum of one shilling and sixpence for every half hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer; and if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away, or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made, or if such driver on the final discharge of such hackney carriage refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding forty shillings (*u*).

Penalty on proprietors, etc. convicted of overcharging.

58. Every proprietor or driver of any such hackney carriage (*v*) who is convicted of taking as a fare (*w*) a greater sum than is authorised by any byelaw (*x*) made under this or the special Act shall be liable to a penalty not

(*u*) There is no summary remedy outside the metropolis similar to the London Cab Act, 1896, for what is called "bilking" a cabman.

(*v*) See note (*s*), *ante*, p. 1469.

(*w*) See note (*t*), *ante*, p. 1469.

(*x*) A byelaw made under a local Act prescribed fares chargeable by drivers of hackney carriages and distinguished between carriages drawn by one and two horses respectively. Special regulations were subsequently made which applied the byelaws and Acts of Parliament respecting hackney carriages to motor cabs, and prescribed a scale of charges for motor cabs. A driver of a motor cab demanded and was paid the sum registered by his taximeter, which was in accordance with the scale of charges under the regulations, but in excess of that under the byelaw. On an appeal by the driver from a conviction for

exceeding forty shillings, and such penalty may be recovered before one justice; and in the conviction of such proprietor or driver an order may be included for payment of the sum so overcharged, over and above the penalty and costs; and such overcharge shall be returned to the party aggrieved, . . . (y).

59. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding twenty shillings. Penalty for permitting persons to ride without consent of hirer.

60. No person authorised by the proprietor of any hackney carriage to act as driver of such carriage shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof; and no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor; and any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding forty shillings for every such offence. No unauthorised person to act as driver.

61. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding five pounds; and in default of payment thereof the justices before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding two months (*a*). Penalty on drivers for drunkenness, furious driving etc.

62. If the driver of any such hackney carriage (*a*) leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty not exceeding twenty shillings for such offence; and in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made, and after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justice as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage. Penalty in case of carriages being unattended at places of public resort.

63. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage (*a*) let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum, not exceeding five pounds, as appears to the justice a reasonable compensation for such hurt or damage; Compensation for damage done by driver.

breach of the byelaw it was held that the byelaw did not apply to motor cabs and the conviction was quashed (*Gibson* v. *Brown* (1909), 31 M. C. C. 3).

(*y*) The remainder of this section permitting the party aggrieved to give evidence in proof of the offence was repealed by the S. L. R. A., 1894, as no longer necessary.

(*a*) See note (*s*), *ante*, p. 1469. Persons convicted under s. 61 of being intoxicated while driving a hackney carriage may either in addition to or in substitution for any other penalty be ordered to enter into a recognisance with or without sureties to be of good behaviour under s. 3 of the Licensing Act, 1902.

and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages (*b*).

Penalty on drivers obstructing other drivers.

64. Any driver of any hackney carriage (*c*) who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding twenty shillings.

Compensation to drivers attending to answer complaints not substantiated.

65. If the driver of any such hackney carriage (*c*) be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any byelaw made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable; and in default of payment of such compensation the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

Fare unpaid may be recovered as a penalty.

66. If any person refuse to pay on demand to any proprietor or driver of any hackney carriage the fare (*d*) allowed by this or the special Act, or any byelaw made thereunder, such fare may, together with costs, be recovered before one justice as a penalty (*e*).

Penalty and compensation for damaging carriage.

67. Any person using any hackney carriage (*f*) plying under a licence granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty not exceeding five pounds, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

Byelaws for regulating hackney carriages.

68. The commissioners may from time to time (subject to the restrictions of this and the special Act) make byelaws for all or any of the purposes following; (that is to say,) (*g*)

(*b*) Compensation accepted under this section is a bar to a subsequent action for the same damage. See *Wright* v. *London General Omnibus Co.* (1877), 2 Q. B. D. 271; 41 J. P. 486. Apart from this provision the proprietor of a cab may be responsible for damages caused by the negligence of the driver, the relationship between them being generally that of master and servant. See *Venables* v. *Smith* (1876), 2 Q. B. D. 279; 41 J. P. 551; *Rayner* v. *Mitchell* (1876), 2 C. P. D. 357; 25 W. R. 633; *King* v. *Spurr* (1882), 8 Q. B. D. 104; *Playle* v. *Kew* (1886), 2 T. L. R. 859; *King* v. *London Improved Cab Co.* (1889), 23 Q. B. D. 281; 53 J. P. 788; *Keen* v. *Henry*, [1894] 1 Q. B. 292; 58 J. P. 262; *Gates* v. *Bill*, [1902] 2 K. B. 38). As to the master's responsibility for the negligence of a volunteer called in to drive in case of emergency, see *Gwilliam* v. *Twist*, [1895] 2 Q. B. 84; 59 J. P. 484, or for that of a servant not acting within the scope of his authority, *e.g.*, a conductor driving an omnibus to its starting place, see *Beard* v. *London General Omnibus Co.*, [1900] 2 Q. B. 530; *Ricketts* v. *Thomas Tilling Ltd.* (1913), 30 T. L. R. 132.

(*c*) See note (*a*), p. 1471.

(*d*) See notes (*s*) and (*t*), *ante*, p. 1469.

(*e*) The amount of the fare is recoverable only as a civil debt under ss. 6 and 35 of the S. J. A., 1879 (*R.* v. *Kerswill* or *Torquay JJ.*, [1895] 1 Q. B. 1; 59 J. P. 342).

(*f*) See note (*s*), *ante*, p. 1469.

(*g*) Model byelaws have been issued by the L. G. B. under this section. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 265. As to the confirmation of these byelaws, see 47 & 48 Vict. c. 12, *ante*, p. 720.

For regulating the conduct of the proprietors and drivers (*h*) of hackney carriages plying within the prescribed distance in their several employments (*i*), and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling :

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed :

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the hol ing of the same by the driver, and how such hackney carriages are to be furnished or provided :

For fixing the stands (*k*) of such hackney carriages, and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares (*kk*) :

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

(*h*) A corporation made the following byelaw : " The owner of every motor hackney carriage shall have fitted on such carriage an efficient lamp solely for the purpose of illuminating the dial of the taximeter, whenever it is necessary, in such a manner that the amount of fare recorded can be clearly seen from the inside of the carriage at all times, and every driver shall see that the lamp is properly lighted and adjusted and so kept." On a summons against a driver for breach of this byelaw, he was discharged upon the ground that the byelaw was invalid for uncertainty and unreasonableness, since it imposed two duties, one on the owner and one on the driver : that although the duty on the owner was to fit an efficient lamp for illuminating the dial " whenever it was necessary," these words did not appear in the part of the byelaw relating to the driver, and further that the byelaw did not contain adequate information as to the driver's duties. The Divisional Court held that the words " whenever it was necessary " applied both to the owner and the driver ; that it required the lamp to be fitted by the owner and kept alight by the driver ; that it was not unreasonable that the light should be solely for the purpose of lighting the dial, and therefore that the byelaw was valid (*Dunning* v. *Maher* (1912), 76 J. P. 255 ; 106 L. T. 846).

(*i*) A byelaw prohibiting the plying for hire in any street or place within the district (except on one of the stands fixed by the local board) was held to be valid though the actual locality of the stand was not set out in it. A driver on the sea beach passed a stand, and then got off his carriage and took up a fare :—*Held*, that he had been properly convicted of a breach of the byelaw (*Blackpool L. B.* v. *Bennett* (1859), 4 H. & N. 127 ; 28 L. J. M. C. 203). A byelaw provided that " a person shall not in any public thoroughfare in the district tout for a hackney carriage." The respondent stood on a triangular piece of land at a street corner touting for hackney carriages, having received permission from the freeholders of the land to stand on it for the purpose of his business. The land was always open for the public to pass over, and the street (including the piece of land) had been declared a public highway. It was held that the fact that the piece of land in question belonged to private persons did not prevent his act from being an offence against the byelaw (*Derham* v. *Strickland* (1911), 75 J. P. 300 ; 104 L. T. 820). As to loitering, see *Fairfoul* v. *Somerville* (1895), 23 Ct. of Sess. Cas. (4th ser.) (J. C.) 6 ; *Murphy* v. *Neilson* (1901), 3 F. (Just. Cas.) 77. The following byelaw was held not to be *ultra vires* under similar words in the Edinburgh Municipal and Police Act, 1879, viz., " the driver of a hackney carriage shall not stand with the same longer than is necessary for taking up or setting down passengers on any part of the public streets not allowed as a hackney carriage stand except at the dismissal of theatres, assemblies, public meetings, and the like." And it was held that a driver was properly convicted under it, who waited outside an hotel for about an hour in pursuance of an arrangement between his employers and the hotel manager, but without being hired by anyone wishing to take the cab (*Mackenzie* v. *Somerville* (1901), 3 F. (Just. Cas.) 4).

(*k*) The commissioners may remove a stand altogether if it be an obstruction (*R.* v. *Rawlinson* (1836), 6 B. & C. 23 ; 5 L. J. M. C. 16).

(*kk*) See note (*x*), *ante*, p. 1470.

Bathing.

And with respect to public bathing, be it enacted as follows:

Byelaws for regulating public bathing-places.

69. Where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of the special Act, the commissioners may make byelaws for the following purposes (*l*); (that is to say,)

For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe:

For preventing any indecent exposure of the persons of the bathers (*m*):

For regulating the manner in which the bathing machines shall be used, and the charges (*m*) to be made for the same:

For regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.

* * * * *

THE POOR LAW AUDIT ACT, 1848.

(11 & 12 VICT. c. 91.) (*n*)

An Act to make provision for the Payment of Parish Debts, the Audit of Parochial and Union Accounts, and the Allowance of certain charges therein.

[31st August, 1848.]

* * * * *

Appeal against allowances, disallowances, and surcharges.

4. Where any appeal shall be made to the said commissioners (*o*) against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as to make it fair and equitable that the disallowance or surcharge shall be remitted they may, *by an order under their seal* (*p*), direct that the same shall be remitted (*q*), upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

(*l*) Model byelaws have been issued under this section. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 295. As to the confirmation of these byelaws, see 47 & 48 Vict. c. 12, *ante*, p. 720. The licence of an urban district council to use a bathing machine gives no authority to place the machine on the seashore, the ownership of which belongs to a private person, without his consent (*Mace* v. *Philcox* (1864), 28 J. P. 297; 15 C. B. (N.S.) 600). As to revocation of licences, see *Pelham* v. *Littlehampton U. D. C.* (1899), 63 J. P. 88. As to indecent bathing on the seashore, see *R.* v. *Crunden* (1809), 2 Camp. 89; *R.* v. *Reed* (1871), 12 Cox, C. C. 1, and generally as to the origin of this section, and the supposed general right to bathe, see *Blundell* v. *Catterall* (1833), 5 B. & A. 268; *Brinckman* v. *Matley*, [1904] 2 Ch. 313; 68 J. P. 134. Special powers for regulating the use of the seashore by byelaws are also given by s. 82 of the P. H. A., 1907.

(*m*) See *Parker* v. *Clegg* (1904), 2 L. G. R. 609.

(*n*) This is one of the Poor Law Audit Acts incorporated with the P. H. A., 1875, s. 248, *ante*, p. 547. See also 7 & 8 Vict. c. 101, *ante*, p. 1308, and 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113; 42 & 43 Vict. c. 6, *post*, pp. 1476, 1493, 1688.

(*o*) Now the L. G. B.; see the note to 7 & 8 Vict. c. 101, s. 36, *ante*, p. 1310.

(*p*) The words in italics were repealed by 29 & 30 Vict. c. 113, s. 5, *post*, p. 1493.

(*q*) Although the High Court has jurisdiction to restrain improper payments out of the rates it cannot control the power of the L. G. B. under this section (*Att.-Gen.* v. *Merthyr Tydfil Union*, [1900] 1 Ch. 516; 64 J. P. 276). And see, *per* SWINFEN EADY, J., in *Att.-Gen.* v. *Tottenham U. D. C.* (1909), 73 J. P. 436; 8 L. G. R. 95.

5. Where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding overseers or officers or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given; and every certificate made by any auditor, if made according to the forms set forth in the Schedule hereunto annexed, or to the like effect, shall be deemed to be sufficient: Provided always, that where the sum or the aggregate of the sums disallowed by the auditor in the account of any officer shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the treasurer. Mode of ascertaining and certifying balances due from officers.

* * * * *

7. In addition to the notices now required by law to be given by the auditor, he shall also give notice by advertisement in some newspaper circulating in the county wherein the union or the greater part of it, or, in the case of a parish not comprised in a union, wherein such parish shall be situated, a reasonable time prior to the holding of his audit; and the production of a copy of such newspaper shall in all courts and for all purposes be deemed sufficient evidence of the notice of the audit; and, except where a party, not being an officer bound to account to the auditor, shall be surcharged by such auditor, it shall not be necessary to prove that the audit of any accounts was adjourned, and that notice of any such adjourned audit was given. Notice of audit to be advertised.

8. If an auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall, if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make this surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him, and showing cause against such surcharge, and at such time the said auditor shall hear the party, if present, and determine according to the law and justice of the case. Notice by auditor to person surcharged.

9. In any proceedings to be taken by an auditor, or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the Poor Law Commissioners, or of the commissioners aforesaid, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which non-payment a certificate in writing, purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned Recovery of sums certified by auditor.

certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information (*r*).

* * * * *

SCHEDULE TO WHICH THIS ACT REFERS.

FORMS OF CERTIFICATES.

1. *Against an Accounting Officer.*

I do hereby certify, that in the account of *A. B.*, the [*set out the name of the office*] of the parish of [*or* of the union], I have disallowed [*or* surcharged] the sum of .

As witness my hand, this day of , 1848.

M. N., Auditor of the District, which comprises the above-named Parish *or* Union.

2. *Against a Person not an Accounting Officer.*

I do hereby certify, that in the accounts of the Union [*or* of the parish of] I have disallowed the sum of £ , as a payment illegally made out of the funds of such union [*or* parish]; and I find that *C. D.*, of , authorised the making of such illegal payment, and I do hereby surcharge the said *C. D.* with the same.

As witness my hand, this day of , 1848.

M. N., Auditor of the District, which comprises the above-named Union *or* Parish.

THE POOR LAW AMENDMENT ACT, 1849.

(12 & 13 VICT. c. 103.) (*s*)

An Act . . to make certain Amendments in the Laws for the Relief of the Poor. [1st August 1849.]

* * * * *

Recited provision not to apply to proceedings by auditors.

9. [*Recital of* 11 *&* 12 *Vict. c.* 43, *s.* 11, *and of doubts whether the provision of that section applies to proceedings by auditors to recover sums certified by them to be due in the accounts of officers or other persons.*] Nothing in the provision of the said Act herein recited shall be deemed to apply to any such proceeding by any auditor; but no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same

(*r*) See the cases cited in the notes to 7 & 8 Vict. c. 101, s. 32, *ante*, p. 1308. See also *R.* v. *Fordham* (1873), L. R. 8 Q. B. 501, where it was held that the certificate of the treasurer was only primâ facie evidence of non-payment, and that it was open to the person surcharged to show what he had paid, if he could do so without contradicting the auditor's certificate.

(*s*) The following sections of this Act relate to the audit of accounts, and are incorporated with the P. H. A., 1875, by ss. 247, 248, *ante*, pp. 541, 547. The short title is as enacted by the Short Titles Act, 1896. See also 7 & 8 Vict. c. 101, *ante*, p. 1308; and 11 & 12 Vict. c. 91, *ante*, p. 1474, and 29 & 30 Vict. c. 113; and 42 & 43 Vict. c. 6, *post*, pp. 1493, 1688.

to the Court of Queen's Bench or to the Poor Law Board, after the lapse of nine calendar months from the determination thereupon (*t*).

* * * * *

11. Where any auditor shall lay any information for a penalty, in consequence of the default of any officer or other person to attend the audit, or the adjournment thereof, or to produce the proper account or vouchers, or to make or sign the proper declaration before him, the costs incurred by such auditor, when not recovered from the defendant in such information, shall, if the Poor Law Board consent thereto, be payable to such auditor, and be chargeable in like manner as the costs incurred by an auditor in enforcing the payment of sums certified by him to be due.

Costs of auditors on information for default of due attendances at audit, etc.

* * * * *

THE BURIAL ACT, 1857.

(20 & 21 VICT. c. 81.) (*u*)

An Act to amend the Burial Acts. [25th August 1857.]

* * * * *

4. In case it appear to her Majesty in Council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an Order in Council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for her Majesty, with the advice of her Privy Council, in case her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners; and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no

Local board of health or improvement commissioners may, by order in council be constituted a burial board.

(*t*) See upon this clause, *R.* v. *Tyrwhitt* (1850), 15 Q. B. 249; 19 L. J. M. C. 249. The determination within the meaning of this section of an appeal to the L. G. B. from a disallowance and surcharge by a district auditor means the final determination, and the Board may with the consent of all parties reconsider their determination, and the time for enforcing the auditor's certificate runs from the determination upon the reconsideration (*R.* v. *Dolby* (1902), 66 J. P. 532; 87 L. T. 27).

(*u*) The short title of this Act is as enacted by the Short Titles Act, 1896. The following sections are such as concern the appointment and duties of local authorities as burial boards. It is of course impossible to include in the Appendix all the provisions of the Burial Acts, for which reference should be made to Brook Little's Law of Burials, 3rd edition. See also 23 & 24 Vict. c. 64, *post*, p. 1483, and 25 & 26 Vict. c. 100, *post*, p. 1485. See also the P. H. A., 1875, ss. 310, 343, and Sched. V., Part 3, *ante*, pp. 647, 664, 696.

approval, sanction, or authorisation of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the London Gazette, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: Provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848 (*x*).

11 & 12 Vict. c. 63.

Burial board may be established for a district not maintaining its own poor, and which has had no separate burial ground.

5. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid *and consecrated* (*y*) for any new parish or district created or to be created pursuant to the provisions of the New Parishes Act, 1843, the New Parishes Act, 1844, and the New Parishes Act, 1856, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district, (if any burial ground has been or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable,) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, *and be entitled to the same fees* (*y*), and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, *and be entitled to the same fees* (*y*), in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said burial Acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively.

6 & 7 Vict. c. 37. 7 & 8 Vict. c. 94. 19 & 20 Vict. c. 104.

* * * * *

Resolutions, etc. of vestries not to be void by reason of irregularity of notices, etc.

27. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings

(*x*) See the P. H. A., 1875, s. 4, *ante*, p. 3.

(*y*) The words here printed in italics were repealed by the Burial Act, 1900, s. 12, and Sched., *post*, p. 1982. See now ss. 1 and 3 of that Act as to consecration and fees.

of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity or error.

28. In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts (z) or any of them, or under this Act. Meaning of "burial board."

* * * * *

30. The hereinbefore recited Acts and this Act shall be construed together as one Act. Recited Acts and this a one.

THE PUBLIC HEALTH ACT, 1858.

(21 & 22 VICT. c. 97.) (a)

An Act for vesting in the Privy Council certain Powers for the Protection of the Public Health. [2nd August 1858.]

1. [*Powers of General Board of Health under* 18 *&* 19 *Vict. c.* 116, *added to those of the Privy Council.*] (b)

2. [*Certain powers in relation to Public Vaccination vested in the Privy Council.*] (c)

3. [*Privy Council may direct inquiries.*] (b)

4. The powers of appointing and removing a medical officer, vested in the General Board of Health under the General Board of Health Continuance Act, 1855, shall, upon the discontinuance of that board, be vested in the Privy Council (d); . . . and the Privy Council may also from time to time employ such other persons as they deem necessary for the purposes of this Act; and there shall be paid to the medical officer such salary not exceeding fifteen hundred pounds per annum, and to such other persons such remuneration and allowances, as the Treasury may direct; and such salary, remuneration, and allowances shall be paid out of such moneys as shall be provided by Parliament (e). Privy Council to appoint medical officer, etc.

5. [*Medical officer to report annually as to the execution of this Act.*] (b)

6. [*Reports to be laid before Parliament.*] (b)

7. All powers vested in the Privy Council by this Act may be exercised by any three or more of the lords and others of the Privy Council, . . . (f) Exercise of powers vested in the Privy Council, etc.

(z) These are the Burial Act, 1852; the Burial Act, 1853; the Burial Act, 1854; the Burial Act, 1855.

(a) This Act was made perpetual by 22 & 23 Vict. c. 3.

(b) Sections 1, 3, 5, and 6 are repealed by the S. L. R. A., 1893 (No. 1), the powers and duties of the Privy Council under those sections having been transferred to the L. G. B. by 34 & 35 Vict. c. 70, *post*, p. 1555.

(c) Repealed by 30 & 31 Vict. c. 84, s. 1.

(d) The next clause of this section as it originally stood was repealed by the S. L. R. A., 1878.

(e) Section 4 is repealed by the S. L. R. A., 1875, in so far as it relates to the salary of the medical officer. As to the salary of this officer, see the P. H. A., 1875, Sched. V., Part 3, *ante*, p. 696.

(f) Certain words are here repealed by 62 & 63 Vict. c. 33, s. 1 (3).

and all orders, regulations, directions, and acts of the Privy Council under this Act shall be sufficiently made and signified by a written or printed document, signed by one of the clerks of the Privy Council, or such officer as may be appointed by the Privy Council in this behalf; and all orders, regulations, directions, and acts made or signified by any written or printed document purporting to be so signed shall be deemed to have been duly made, issued, and done by the Privy Council; and every such document shall be received in evidence in all courts and before all justices and others without proof of the authority or signature of such clerk or other officer, or other proof whatsoever, until it be shown that such document was not duly signed by the authority of the Privy Council (*g*).

8. [*Proceedings for penalties under Vaccination Acts.*] (*h*)

Short title.

9. This Act may be cited as "The Public Health Act, 1858" . . .

THE PUBLIC IMPROVEMENTS ACT, 1860.

(23 & 24 VICT. c. 30.)

An Act to enable a Majority of Two Thirds of the Ratepayers of any Parish or District, duly assembled, to rate their District in aid of Public Improvements for general benefit within their District (*i*).

[3rd July 1860.]

Ratepayers may hold land, etc. for purpose of forming public walks, etc. and levy rates for maintaining the same, etc.

1. It shall be lawful for the ratepayers of any parish maintaining its own poor, the population of which, according to the last account from time to time taken thereof by the authority of Parliament, exceeds five hundred persons, to purchase or lease lands, and to accept gifts and grants of land, for the purpose of forming any public walk, exercise or play ground, and to levy rates for maintaining the same, and for removal of any nuisances or obstruction to the free use and enjoyment thereof, and for improving any open walk or footpath, or placing convenient seats, or shelters from rain, and for other purposes of a similar nature.

Adoption of Act.

9 & 10 Vict. c. 74.

2. This Act may be adopted for any borough, or for any parish having a population of five hundred or upwards (according to the last account for the time taken by authority of Parliament), in the same manner as the Baths and Washhouses Act, 1846, may be adopted in such borough or parish (*k*).

Application of certain provisions of 9 & 10 Vict. c. 74.

3. Where the Act is adopted in a borough or in such a parish, the provisions of the Baths and Washhouses Act, 1846, for the purposes below specified, applicable in the like cases where that Act is adopted, shall take effect for the purposes of this Act, viz.: All the provisions concerning—

1. The authority by which and the manner in which the Act is to be carried into execution (*l*);

(*g*) See also the Documentary Evidence Acts, 1868 and 1882.

(*h*) Repealed by 22 & 23 Vict. c. 3.

(*i*) This Act does not affect sanitary authorities other than urban sanitary authorities which are also municipal corporations. It cannot be adopted in any sanitary district other than a borough, but it may be adopted by any parish, wheresoever situate, and in the case of rural parishes the population need not now exceed five hundred. See s. 7 of the L. G. A., 1894, *ante*, and notes thereto.

It will be observed from s. 164 of the P. H. A., 1875, and s. 8 of the L. G. A., 1894, that district and parish councils may provide recreation grounds under later provisions. The special value of the Act probably consists in the power to provide seats in open walks.

(*k*) The 9 & 10 Vict. c. 74, may be adopted in manner provided by ss. 1, 5 of that Act, *ante*, p. 1372.

(*l*) 9 & 10 Vict. c. 74, s. 7, *ante*, p. 1374.

2. The mode of providing the expenses of carrying the Act into execution (excluding the provisions for borrowing money for such expenses) (*m*);
3. The appointment (in the case of a parish) of commissioners, the tenure of office and procedure, and the audit of their accounts (*n*);
4. The powers of the councils and commissioners for the purposes of the Act (except the powers of borrowing money) (*o*).

4. After the adoption of this Act it shall be lawful for the ratepayers in meeting assembled to rate such parish to a separate rate, to be called the "Parish Improvement Rate"; provided, that such rate be agreed to by a majority of at least two-thirds (*p*) . . . of the ratepayers assembled at such meeting. Ratepayers, after notice given, to rate parishes.

5. Corporate bodies shall be allowed to attend meetings to be held as aforesaid and to vote thereat by some person to be deputed by them for that purpose under their corporate seal. Corporate bodies may attend and vote.

6. Provided always, that previous to any such rate being imposed a sum in amount not less than at least one half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation. One half of the estimated cost to be raised by private subscription.

7. Such rate shall not exceed sixpence in the pound. Limit of rate.

THE LOCAL TAXATION RETURNS ACT, 1860.

(23 & 24 VICT. c. 51.) (*q*)

An Act to provide for an Annual Return of Rates, Taxes, Tolls, and Dues levied for Local Purposes in England. [23rd July 1860.]

1. The clerk to any corporation, justices, commissioners, district or other board, vestry, inspectors, trustees, or other body or persons authorised to levy or to order to be levied any of the rates, taxes, tolls, or dues mentioned in the Schedule to this Act, or any other compulsory rates, taxes, tolls, or dues in England, (other than such as are levied for the public revenue of the United Kingdom,) shall make a return of the sums levied or received by or in respect of such rates, taxes, tolls, and dues, and of the expenditure thereof, to one of her Majesty's principal Secretaries of State . . . in every year (*r*); . . . Clerks of bodies empowered to levy rates, etc. to make annual returns to Secretary of State.

2. Such returns . . . shall show the amounts levied and expended respectively, with such other particulars and in such form as shall from time to time be ordered by such Secretary of State (*r*). Contents of returns.

3. . . . where any such rates, taxes, tolls, or dues are levied and expended or to be accounted for by churchwardens, chapelwardens, or any Who are to make returns in certain cases.

(*m*) 9 & 10 Vict. c. 74, s. 16, *ante*, p. 1375, and s. 21, *ante*, p. 1376.
(*n*) 9 & 10 Vict. c. 74, ss. 6—15, *ante*, pp. 1374, 1375.
(*o*) 9 & 10 Vict. c. 74, ss. 24—40, *ante*, pp. 1377—1382.
(*p*) The words "in value" here following were repealed by s. 89 of the L. G. A., 1894.
(*q*) This Act is repealed as to boroughs within the Municipal Corporations Act, 1882, Sched. I., Part II. As to returns to be made in such boroughs, see s. 28 of that Act. This Act was amended by 40 & 41 Vict. c. 66, *post*, p. 1688, and was extended to highway accounts by 42 & 43 Vict. c. 39, and 45 & 46 Vict. c. 67.
(*r*) The annual return must be made for the year ending March 25th, and must be sent to the L. G. B.; but no return need now be made, unless specially called for, where the accounts are audited by a district auditor (40 & 41 Vict. c. 66, s. 1; 42 & 43 Vict. c. 6, s. 3, *post*, pp. 1668, 1688).

officers or persons not authorised to act as a board, such returns as hereinbefore mentioned in respect of such rates, taxes, tolls, or dues, and the expenditure thereof, shall be made by such churchwardens, chapelwardens, or other officers or persons; and they shall be severally liable in respect of any neglect to make the same (*s*).

Penalty for default.

4. Any . . . churchwarden, officer, or other person required as aforesaid to make such return, who neglects so to do in the month of June in any year, shall be liable to a penalty not exceeding twenty pounds for every such offence, to be recoverable on summary conviction thereof before two justices (*t*).

Saving for cases where returns are already required.

5. Where any annual return is now by law required to be made to the Secretary of State, or to any public department, under any Act of Parliament, this Act shall not render necessary any further or other return in respect of the same matters: Provided always, that the said Secretary of State may, by his order published in the London Gazette, direct that all or any of such returns now required as aforesaid shall in future be made under this Act, and shall be subject to the provisions and penalties thereof.

Abstracts of returns to be laid before Parliament.

6. The said Secretary of State shall every year cause the returns transmitted to him under this Act to be abstracted, and the abstract thereof to be laid before both Houses of Parliament.

Poor rate returns to be made to Poor Law Board as heretofore.

7. This Act shall not extend to the rates levied for the relief of the poor, or the expenditure thereof; but the returns thereof shall continue to be made to the Poor Law Board (*u*), as by the orders of such Board shall from time to time be directed.

Saving for companies and private rights of toll, etc.

8. This Act shall not extend to any tolls or dues taken by any railway, canal, or joint stock company as profits of their undertaking, or to any tolls or dues taken by prescription or otherwise as private property.

SCHEDULE.

Church rates and chapel rates; whether made by the common law or under the Church Building Acts, or under any other Act of Parliament.

Sewers rates and "general sewers tax," and all rates, scots, and taxes levied by courts or commissioners of sewers; whether levied under the Acts of the 3 & 4 Will. 4, c. 22, and 4 & 5 Vict. c. 45, or under any other Act of Parliament, or by charter, usage, or custom (*x*).

Rates under the Act for the lighting and watching of parishes, 3 & 4 Will. 4, c. 90.

Rates levied by improvement commissioners or other commissioners, or by any trustees or corporation acting under any local Act for the paving, draining, cleansing, or watching, improvement or regulation of any town or district.

Rates levied by or under the order of any vestry or district board, under the Act 18 *&* 19 *Vict. c.* 120, *for the better local management of the metropolis* (*y*).

Tolls and dues levied under the authority of Parliament in respect of markets, bridges, or harbours (*z*).

(*s*) See 40 & 41 Vict. c. 66, s. 2, *post*, p. 1669.

(*t*) See also 40 & 41 Vict. c. 66, s. 2, *post*, p. 1669. The words "clerk, treasurer" omitted from this section after the word "any," and before the word "churchwarden," were repealed by the S. L. R. A., 1892.

(*u*) Now the L. G. B. (34 & 35 Vict. c. 70, *post*, p. 1555).

(*x*) As to returns by sanitary authorities, see 40 & 41 Vict. c. 66, ss. 2, 3.

(*y*) Now superseded by the London Government Act, 1899.

(*z*) As to the extinction of customary tolls by tolls under Act of Parliament, see *Taylor* v. *New Windsor Corporation*, [1899] A. C. 41; 63 J. P. 164.

THE BURIAL ACT, 1860.

(23 & 24 VICT. c. 64.) (*a*)

An Act to make further provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.

[6th August 1860.]

Expenses of local board constituted a burial board may be paid out of general district rate, or by a separate rate.

1. Any money required by any local board constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts and of this Act in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the local board so think fit, be paid out of the general district rates leviable within such district; and such local board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate, to be assessed and recovered in like manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them (*b*).

Expenses of improvement commissioners, when acting as a burial board, may be paid out of improvement rate, or by a separate rate.

2. Any money required by any such commissioners as aforesaid who shall have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district; and the commissioners as such burial board may levy as part of the improvement rate, or by a separate rate, under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them (*c*).

Separate accounts to be kept, etc.

3. The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by moneys raised under the provisions of this Act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and commissioners respectively; and any surplus of the moneys raised by any rate made under this Act, and of the income of any burial ground provided by means of moneys raised or paid under the provisions of this Act, which may remain after payment of the expenses and moneys which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act (*d*).

(*a*) See 20 & 21 Vict. c. 81, *ante*, p. 1477, and 25 & 26 Vict. c. 100, *post*, p. 1485.
(*b*) See 21 & 22 Vict. c. 98, s. 49, *ante*, p. 697.
(*c*) See 25 & 26 Vict. c. 100, s. 1, *post*, p. 1485.
(*d*) As to the form of the accounts, see the memorandum of instructions in regard to financial statements in the Appendix, *post*, p. 2177, clauses 21—25, and the form of financial statement, Stat. R. & O., 1903, p. 718. Income tax is payable on the surplus (*Paddington Burial Board* v. *Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9; 48 J. P. 311).

Consent of Secretary of State to appointment of burial board in certain cases.

4. Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of her Majesty's principal Secretaries of State (*e*).

THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

(23 & 24 VICT. c. 106.) (*f*)

An Act to amend the Lands Clauses Consolidation Acts, 1845, *in regard to Sales and Compensation for land by way of a Rentcharge, Annual Feu Duty or Ground Annual, and to enable her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.* [20th August 1860.]

Part of section 10 of recited Act repealed.

1. *So much of the tenth section of the Lands Clauses Consolidation Act,* 1845, *as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed* (*g*).

Powers in 8 & 9 Vict. c. 18, ss. 10, 11, to sell lands for a rentcharge, and to recover rentcharge, extended to all sales, etc. where parties are under disability.

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale, or entitled to such compensation, are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act (*h*).

* * * * *

Amount of rentcharge to be settled in manner directed in 8 & 9 Vict. c. 18, s. 9, etc. (*i*).

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, . . . hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided, that the amount of such annual rentcharge, . . . shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid by way of compensation for any damage that may be done to the said lands shall in all such cases be added to and shall form a part of the said rentcharge, . . . and that no fine, . . . premium, or other consideration in the nature thereof, shall

(*e*) See *R.* v. *Walcot St. Swithin Overseers* (1862), 2 B. & S. 571; 31 L. J. M. C. 221. By s. 4 of the Burial Act, 1900, *post*, p. 1980, the powers and duties of the Secretary of State under this section are transferred to the L. G. B. For the mode of obtaining the approval of the L. G. B. to the appointment of a burial board, see s. 1 of the Burial Act, 1871.

(*f*) See 8 & 9 Vict. c. 18, *ante*, p. 1321; and 46 & 47 Vict. c. 15, *post*, p. 1763. The collective title of the Acts is now the Lands Clauses Acts.

(*g*) This section was repealed by the S. L. R. A., 1875, but it is retained here to explain the repeal effected by it. See 8 & 9 Vict. c. 18, s. 10, *ante*, p. 1324.

(*h*) See these sections, *ante*, p. 1324; s. 3 relates to Scotland only.

(*i*) See the section, *ante*, p. 1324. Words relating to Scotland only are omitted from this and the following section.

be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge . . . made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

5. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts only, for the purchase of any lands in consideration of the payment of a rentcharge . . . the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years purchase of any rentcharge, . . . so for the time being payable. If lands are purchased by way of rent-charge, the borrowing powers of the promoters shall be reduced proportionally.

6. [*Purchase of lands by municipal corporations.*] (*k*)

*   *   *   *   *

8. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, . . . in all matters in which it relates to the said Act . . . and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860." This Act and 8 & 9 Vict. c. 18 to be construed together. Short title.

THE BURIAL ACT, 1862.

(25 & 26 VICT. c. 100.) (*l*)

An Act to authorise Improvement Commissioners acting as Burial Boards to mortgage certain Rates for the purposes of the Burial Acts.

[7th August 1862.]

1. Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, who shall have been constituted a burial board for any district, may, with the approval of the Treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviable within the district, such sums of money as may be required by the burial board for the purposes of the Burial Act within the district (*m*). Commissioners, with consent of Treasury, may mortgage improvement rate and burial rate or either.

2. The clauses and provisions of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners (*n*), shall be incorporated with this Act, and shall be applicable to all mortgages created under the provisions thereof. 10 & 11 Vict. c. 16, to apply to mortgages under this Act.

(*k*) The whole of this section is repealed, except as to Ireland, by the S. L. R. A., 1892, having been superseded as to England by certain provisions of the Municipal Corporations Act, 1882, Part V.

(*l*) The short title of this Act is authorised by the Short Titles Act, 1896. The preamble to this Act reciting 23 & 24 Vict. c. 64, was repealed by the S. L. R. A., 1893 (No. 1). See 20 & 21 Vict. c. 81, *ante*, p. 1477, and 23 & 24 Vict. c. 64, *ante*, p. 1483.

(*m*) This is an amendment of 23 & 24 Vict. c. 64, s. 2, *ante*, p. 1483.

(*n*) See 10 & 11 Vict. c. 16, ss. 75—88; Brooke Little's Law of Burials, 3rd ed., p. 674.

THE TOWN GARDENS PROTECTION ACT, 1863.

(26 & 27 VICT. c. 13.) (*o*)

An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs. [4th May 1863.]

Gardens in squares, etc. may be taken charge of by the Metropolitan Board of Works or other corporate authority, etc.

1. Where in any city or borough any enclosed garden or ornamental ground has been set apart otherwise than by the revocable permission of the owner thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for the care of the same, and from the want of such care, or from any other cause, has been neglected, the Metropolitan Board of Works (*nn*), where the same is in any place under their jurisdiction, except the city of London (where the provisions of this Act shall be carried into effect by the corporation of the said city), and the corporate authorities in any other city or borough, shall take charge of the same, putting up a notice or notices to that effect in such garden or ornamental ground, and, if after due inquiry the person entitled to any estate of freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a garden or pleasure ground, or that the same shall not be built upon, but not otherwise, shall cause any buildings or other encroachment made therein within the period of twenty years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding the same) shall vest such garden or ornamental ground in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree as aforesaid to undertake the charge of such garden or ornamental ground, the Metropolitan Board of Works or corporate authority aforesaid shall, within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the Metropolitan Board of Works or corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest as he, she, or they would or ought to have had and

(*nn*) Now the London C. C., see L. G. A., 1888, s. 40 (8).

(*o*) The short title of this Act is as enacted by the Short Titles Act, 1896. It is not absolutely incorporated by any of the P. H. A., but is referred to in the notes to s. 164 of the P. H. A., 1875, *ante*, p. 368; and see *Tulk* v. *Metropolitan Board of Works*, there cited. The preamble and clause of enactment of this Act were repealed by the S. L. R. A., 1893 (No. 1).

enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this Act had not passed.

2. . . . (*p*) Where any right to require that any garden or ornamental ground as aforesaid be kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property, and he shall by notice in writing signed by him addressed to the Metropolitan Board of Works where the same is in any place under their jurisdiction, except the city of London, where the same shall be addressed to the corporation of the said city, or to the corporate authorities in any other city or borough, requesting the said Metropolitan Board of Works or corporate authority to protect the right before mentioned, the said Metropolitan Board of Works or corporate authority, after due inquiry, may, if they shall think fit, accede to such request; and then and thereupon the right of such person to require that such garden or ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such Metropolitan Board of Works or corporate authority, who shall be fully empowered, for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken. Protection from encroachment.

3. Any charge incurred by the Metropolitan Board of Works in the execution of this Act shall be deemed to be expenses of the said board for payment whereof provision is made by the Metropolis Management Act, 1855; and the expenses incurred by any corporate authority shall be deemed to be expenses necessarily incurred by them in carrying into execution within and for their city or borough the Municipal Corporations Act, 1835, and any other Act amending the same (*q*). Expenses, how to be defrayed. 18 & 19 Vict. c. 120. 5 & 6 Will. 4, c. 76.

4. Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street, or place, such committee may make, and from time to time revoke and alter, byelaws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which byelaws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such byelaws, in all courts whatever; and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed as hereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds: Provided always, that such byelaws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts, or by the justices in quarter sessions; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any byelaws tendered to them for that purpose, and to allow or disallow the same as they think meet (*r*). Byelaws for management of garden, etc.

5. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or Penalty for injuring garden.

(*p*) The preamble to this section reciting that it is expedient that the same should be protected from undue encroachment, is repealed by the S. L. R. A., 1893 (No. 1).

(*q*) See now the Municipal Corporations Act, 1882.

(*r*) The power of making byelaws conferred by this section is extended to the trustees or other persons having the care and management of any open space within the meaning of the Open Spaces Act, 1906, who in pursuance of that Act admit to the enjoyment of the open space any persons not owning, occupying or residing in any house fronting thereon. See s. 15 (3) of that Act, *post*, p. 2066.

fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of A. B. and others.

Certain provisions of 18 & 19 Vict. c. 120, to be incorporated with this Act, and to apply to penalties within metropolitan district.

11 & 12 Vict. c. 43, to apply to penalties elsewhere.

6. The provisions contained in the two hundred and twenty-fifth, two hundred and twenty-sixth, two hundred and twenty-seventh, and two hundred and twenty-eighth sections of the Metropolis Management Act, 1855, shall be incorporated in this Act, and shall apply to any penalty or forfeiture imposed by this Act, or any byelaw made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and the Summary Jurisdiction Act, 1848, shall apply to every penalty or forfeiture imposed by this Act, or any byelaw made in pursuance thereof, or any matter or thing done or omitted to be done within any other part of England and Wales.

Act not to extend to property of the Crown, etc.

14 & 15 Vict. c. 95.

7. Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to her Majesty in right of her Crown or of her Duchy of Lancaster, or any garden, ornamental ground, or other land for the time being under the management of the Commissioners of Works, or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental or other ground, for which special provision is made for the due care and protection thereof by any public or private Act of Parliament.

Extent of Act.

8. Nothing in this Act shall extend to Scotland or Ireland.

THE WATERWORKS CLAUSES ACT, 1863.

(26 & 27 VICT. c. 93.) (*s*)

An Act for consolidating in one Act certain Provisions frequently inserted in Acts relating to Waterworks. [28th July 1863.]

10 & 11 Vict. c. 17.

WHEREAS the Waterworks Clauses Act, 1847, was passed in order to comprise in one Act sundry provisions which were at the time of the passing of that Act usually introduced into Acts of Parliament authorising the construction of certain waterworks:

And whereas sundry provisions of the like nature, but not comprised in the said Act, are now frequently introduced into Acts of Parliament relating to waterworks, and it is expedient to comprise such last-mentioned provisions also in one Act, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to waterworks, as for ensuring greater uniformity in the provisions themselves (*t*).

* * * * *

PRELIMINARY.

Short title.

10 & 11 Vict. c. 17.

1. This Act may be cited as the Waterworks Clauses Act, 1863; and the Waterworks Clauses Act, 1847, and this Act may be cited together as the Waterworks Clauses Acts, 1847 and 1863.

(*s*) See 10 & 11 Vict. c. 17, and note (*g*), *ante*, p. 1405.

(*t*) The clause of enactment was repealed by the S. L. R. A., 1893 (No. 1).

2. This Act shall apply to any waterworks to which any special Act (*u*) hereafter passed and incorporating this Act relates; and every such special Act is hereinafter referred to as "the special Act." Application of Act and interpretation of terms.

Terms used in this Act have the same meanings as the same terms have when used in the Waterworks Clauses Act, 1847. 10 & 11 Vict. c. 17.

The provisions respecting the recovery of penalties contained in the last-mentioned Act shall be incorporated with this Act (*x*).

SECURITY OF RESERVOIRS.

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows:

3. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices, on their own view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them. Power for justices to inquire as to danger of reservoir.

4. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint. Order of justices for immediate repair.

5. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall, order the undertakers, within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint. Order of justices on undertakers to repair reservoir.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty. Order of justices on failure of undertakers to repair.

6. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the Schedule to this Act, with such variations as circumstances require. Form of order.

7. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates, or suffers to be done, anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds. Persons acting under order not trespassers, etc.

(*u*) See the P. H. A., 1875, s. 316, *ante*, p. 649.

(*x*) 10 & 11 Vict. c. 17, s. 85. The procedure for recovery of penalties is that provided by 8 & 9 Vict. c. 20, ss. 140 *et seq.*, *ante*, p. 1369.

Order for payment of costs and expenses.

8. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.

Appeal by undertakers.

8 & 9 Vict. c. 20.

9. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845 (*y*), are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the county or place where the cause of appeal arises; and that court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force.

Undertakers not to be responsible for consequences of order.

10. Notwithstanding anything in the special Act contained, the undertakers shall not be liable to pay any damages, penalties, costs, charges, or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or non-performance of their or any of their duties, liabilities, or obligations under the special Act, that may be occasioned by or result from the execution of any such order.

Application of Act, etc.

11. The present provisions with respect to the security of reservoirs shall apply to England . . . (*z*).

SUPPLY OF WATER.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

Supply for other than domestic purposes.

12. A supply of water for domestic purposes (*a*) shall not include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

Want of supply for other than domestic purposes, when excused.

13. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.

Power to let meters, etc. for hire.

14. Where the undertakers are authorised by the special Act (*b*) to supply water by measure, they may let for hire to any consumer of water so

(*y*) 8 & 9 Vict. c. 20, s. 157, *ante*, p. 1369.

(*z*) The rest of s. 11 relates to Scotland and Ireland only.

(*a*) See 10 & 11 Vict. c. 17, s. 53, *ante*, p. 1417, and the notes thereto, and compare *Smith* v. *Muller*, [1894] 1 Q. B. 192; 58 J. P. 167.

(*b*) Section 58 of the P. H. A., 1875, *ante*, p. 131, authorises a supply by meter where the local authority are the undertakers.

supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress . . . for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters, instruments, pipes, and apparatus may be (*c*).

15. The officers of the undertakers may enter any house, building, or lands, to, through, or into which water is supplied by them by measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands, for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but, except with the consent of a justice . . . this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon (*d*).

Power of entry for ascertaining quantity consumed by meter, and for removing meters, &c.

Protection of Water.

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows:

16. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied.

Power to cut off water in certain cases.

17. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair (*e*), or to

Penalty for waste, etc. of water by non-repair of pipes, etc.

(*c*) Words relating to Scotland only are omitted from this and the following section. An obligation on the part of a consumer to provide a meter cannot be implied from this section (*Sheffield Waterworks Co.* v. *Carter* (1882), 8 Q. B. D. 632; 46 J. P. 548). As to the duty of a consumer to provide some means of measuring the water, see *Sheffield Waterworks Co.* v. *Bingham* (1884), 52 L. J. Ch. 624; 48 L. T. 604. See these cases more fully set out, *ante*, p. 131.

See further as to the right to demand a supply by meter *Cooke* v. *New River Co.*, *ante*, p. 1415.

(*d*) See also the P. H. A., 1875, s. 58, *ante*, p. 131.

(*e*) It has been held that where a stop-tap is affixed to a service pipe by the owner of the service pipe, he has committed an offence against the section, although the affixing could not lead to any waste or misuse of the water (*Williams* v. *Llandudno U. D. C.* (1897), 14 T. L. R. 18; 42 Sol. J. 34). See the judgments of Darling and Phillimore, JJ., in *Colne Valley Water Co.* v. *Hall* (1907), 71 J. P. 173; 96 L. T. 395, as to the liability to repair a communication pipe, not the property of the consumer, under a public highway.

be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for unauthorised application of water.

18. If any person—

First, not having from the undertakers a supply of water for other than domestic purposes (*f*), uses, for other than domestic purposes (*g*), any water supplied to him by the undertakers; or

Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers,—

he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused (*h*).

Penalty for unauthorised extension or alteration of pipes.

19. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alteration in any such communication or service pipe, or in any apparatus connected therewith, without the consent in every such case of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused, or unduly consumed (*i*).

Penalty for wrongful taking of water.

20. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds (*j*).

The Court of Appeal in affirming the decision refrained from giving their approval to the reasoning of the Divisional Court: see 72 J. P. 25; 98 L. T. 398.

(*f*) As to the meaning of this phrase, see *ante*, p. 1417.

(*g*) The use of water for washing a cart used in business is a use for "other than domestic purposes," and for washing a yard used for a trade and made dirty by such trade is a use for a trade purpose (*Cambridge University and Town Waterworks Co.* v. *Hancock* (1910), 74 J. P. 477; 103 L. T. 562).

(*h*) Where a rural district council agreed with a water company for a supply of water for street watering, and other specified purposes, and one of the ratepayers in the district took water from the stand-pipe from which the council received such supply, and then used it for his own trade purposes, it was held that the ratepayer was liable to be convicted under this section (*Andrews* v. *Witt* (1899), 65 J. P. 281; 84 L. T. 124).

(*i*) The addition of a stop-tap on the service pipe requires the consent of the undertakers under this section (*Williams* v. *Llandudno U. D. C.* (1897), 14 T. L. R. 18; 42 Sol. J. 34). As to the affixing of a temporary hose-pipe to a communication pipe, see *Cambridge University and Town Waterworks Co.* v. *Hancock* (1910), 74 J. P. 477; 103 L. T. 562. See also *Kyffin* v. *Metropolitan Water Board* (1908), 72 J. P. 517; 99 L. T. 809.

(*j*) See also 10 & 11 Vict. c. 17, s. 59, *ante*, p. 1419.

Recovery of Rates.

And with respect to the recovery of water rates and other money, be it enacted as follows:

21. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof (*k*). Recovery of rates by action.

SCHEDULE. Section 6.

Form of Order of Justices (*l*).

To *A. B.*   , etc.

We the undersigned, two of her Majesty's justices of the peace acting for the [county] of   , do hereby order and direct you [and such person and persons as you may require to aid and assist you herein] forthwith to lower the water in the [*here describe the reservoir and the extent to which the water is to be lowered*], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the   , and for acting as you are hereby directed this shall be your sufficient warrant].

Given under our hands this   day of   one thousand eight hundred and   .

A. B.
C. D.

THE POOR LAW AMENDMENT ACT, 1866.

(29 & 30 Vict. c. 113.) (*m*)

An Act to amend the Act providing Superannuation Allowances to Officers of Unions and Parishes, and to make other amendments in the Laws relating to the Relief of the Poor. [10th August 1866.]

* * * * *

5. *So much of the fourth section of the statute of the eleventh and twelfth years of the reign of her Majesty, chapter ninety-one, as requires the Poor Law Board to issue an order under their seal in cases where they direct any surcharge or disallowance made by an auditor to be remitted shall be repealed; and such direction, if given in writing under the hand of the President of the said Board, and countersigned by a secretary or assistant secretary, shall have the same effect as if such direction were given by such order as aforesaid* (*n*). Remission of surcharges and disallowances need not be made by order under seal.

6. When the Poor Law Board shall require an auditor to hold an extraordinary audit of the accounts of any guardians or overseers, or of any officer, whether still continuing or upon his resignation or removal from office, such audit shall be deemed to be an audit within the meaning of the several Acts relating to the audit of the accounts of the poor rate, and may be held after three days' notice thereof given in the usual manner. Effect of an extraordinary audit.

(*k*) See 10 & 11 Vict. c. 17, s. 74, *ante*, p. 1426, and *Metropolitan Water Board* v. *Bunn*, cited in the notes to that section.

(*l*) See s. 6, *ante*, p. 1489.

(*m*) The following clauses relate to the audit of accounts, and are incorporated by the P. H. A., 1875, ss. 247, 248, *ante*, pp. 541, 547. See also 7 & 8 Vict. c. 101, *ante*, p. 1308; 11 & 12 Vict. c. 91, *ante*, p. 1474; 12 & 13 Vict. c. 103, *ante*, p. 1476; and 42 Vict. c. 6, *post*. The short title of this Act is authorised by 30 & 31 Vict. c. 106.

(*n*) See the section, *ante*, p. 1474. This section has been entirely repealed by the S. L. R. A., 1893 (No. 1), but is here retained for the sake of explaining the repeal effected by it.

Auditor empowered to inspect books at any time.

7. The auditor who shall be authorised to audit the accounts of any guardians, overseers, or officers may at any time, when authorised or required by the Poor Law Board so to do, inspect the accounts and books of account of any guardian, overseer, or any officer liable to account to him; and any such guardian, overseer, or officer who shall thereupon refuse to allow him to inspect the same, or shall obstruct him in such inspection, or shall conceal any such account or book for the purpose of preventing such inspection, shall forfeit a sum not exceeding five pounds, to be recovered as a penalty under the Poor Law Amendment Act, 1834 (*o*), and to be applied to the use of the parish or union for which such guardian, overseer, or officer respectively shall act.

4 & 5 Will. 4, c. 76.

* * * * *

THE AGRICULTURAL GANGS ACT, 1867.

(30 & 31 VICT. c. 130.) (*p*)

An Act for the Regulation of Agricultural Gangs. [20th August 1867.]

Short title.

1. This Act may be cited for all purposes as "The Agricultural Gangs Act, 1867."

* * * * *

Interpretation.

3. The following words and expressions shall in this Act have the meanings hereby assigned to them unless there is something in the context inconsistent with such meanings; that is to say,

"Child" shall mean a child under the age of thirteen years:

"Young person" shall mean a person of the age of thirteen years and under the age of eighteen years:

"Woman" shall mean a female of the age of eighteen years or upwards:

"Gangmaster" shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation; and, until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them shall be deemed to have been hired with the aforesaid view:

"Agricultural gang" shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster.

Regulations as to employment of children, young persons, and women by gangmasters.

4. The following regulations shall be observed by every gangmaster with respect to the employment of children, young persons, and women:

(1) . . . (*q*)

(2) No females shall be employed in the same agricultural gang with males:

(3) No female shall be employed in any gang under any male gangmaster unless a female licensed to act as a gangmaster is also present with that gang:

(*o*) That is, under s. 99, but now according to the provisions of the S. J. Acts.

(*p*) See the L. G. A., 1894, ss. 27 (1) (a), 32, *ante*, p. 1009, 1013. The preamble, clause of enactment, and second section of this Act are repealed by the S. L. R. A., 1893 (No. 1).

(*q*) This sub-section, enacting that no child under the age of eight years should be employed in any agricultural gang, was repealed by s. 16 of the Agricultural Children Act, 1873, which substituted an enactment raising the age to ten. But that Act is now itself repealed by the Elementary Education Act, 1876, by s. 5 of which the employment of children under ten is prohibited generally. See also s. 4 of the Elementary Education Act, 1880, as amended by s. 1 of the Elementary Education (School Attendance) Act, 1893; s. 1 of the Elementary Education (School Attendance) Act 1893 Amendment Act, 1899; s. 6 (1) of the Elementary Education Act, 1900.

And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed.

5. No person shall act as a gangmaster unless he has obtained a licence to act as such under this Act. Gangmasters to be licensed.

Any person acting as a gangmaster without a licence under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts.

6. No licence shall be granted to any person who is licensed to sell beer, spirits, or any other exciseable liquor. Licences not to be granted to keepers of public-houses.

7. Licences to gangmasters shall be granted by two or more justices in divisional petty sessions (*r*), on due proof to the satisfaction of such justices that the applicant for a licence is of good character, and a fit person to be entrusted with the management of an agricultural gang. Licences to gangmasters to be granted by justices.

The justices (*r*) shall annex to their licence a condition limiting, in such manner as they think expedient, the distances within which the children employed by such gangmaster are to be allowed to travel on foot to their work; and any gangmaster violating the condition so annexed to his licence shall for each offence be liable to a penalty not exceeding ten shillings.

Any person aggrieved by the refusal of the justices (*r*) to grant him a licence to act as gangmaster may appeal to the next practicable court of general or quarter sessions; and it shall be lawful for such court, if they see cause, to grant a licence to the applicant, which shall be of the same validity as if it had been granted by the justices in petty sessions.

8. Licences under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original licence is granted. Duration and renewal of licences.

9. There shall be charged in respect of each grant or renewal of licence a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the licence are applicable. Fees in respect of licences and renewals.

10. On any conviction of a gangmaster of any offence against this Act the justices who convict him shall endorse on his licence the fact of such conviction; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding three months; and on any conviction of any gangmaster of a third offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding two years. Licence, how affected by first and other convictions of gangmaster.

And after a fourth conviction for an offence against this Act the gangmaster shall be disqualified from holding or receiving a licence under this Act.

11. All penalties under this Act may be recovered summarily before two or more justices in manner directed by the Summary Jurisdiction (England) Acts. Recovery of penalties. 11 & 12 Vict. c. 43, etc.

12. This Act shall not apply to Scotland or Ireland. Extent of Act.

(*r*) Licences are now granted by district councils and not by the justices. See the L. G. A., 1894, s. 27, *ante*, p. 1009.

THE REGULATION OF RAILWAYS ACT, 1868.

(31 & 32 VICT. c. 119.) (*s*)

An Act to amend the Law relating to Railways. [31st July 1868.]

PRELIMINARY.

Short title.

1. This Act may be cited as the Regulation of Railways Act, 1868.

* * * * *

VI.—ARBITRATIONS BY BOARD OF TRADE (*t*).

Appointment by Board of Trade of arbitrator to act for them.

30. Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company is one of the parties, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Board of Trade (*u*).

If the arbitrator dies, or in the judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another arbitrator.

Remuneration of arbitrators or umpires appointed by Board of Trade.

31. The Board of Trade may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other Act in any case where a company is one of the parties, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them; and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade.

Costs, etc. of arbitrations where one of the parties is not a railway company. 22 & 23 Vict. c. 59.

32. The provisions of sections eighteen to twenty-nine, both inclusive, of the Railway Companies Arbitration Act, 1859 (*x*), shall so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company; and in construing those sections for the purpose of this Act, the word "companies" shall be construed to mean the parties to the arbitration.

* * * * *

(*s*) The sections of this Act here set out are those which relate to arbitration, and are incorporated by s. 63 of the L. G. A., 1888, *ante*, p. 778, so as to apply to arbitrations by the L. G. B. under that Act. The preamble was repealed by the S. L. R. A., 1893 (No. 1).

(*t*) For the Board of Trade it is necessary to read the L. G. B., and for the company the county council, urban authority, or other party to the arbitration.

(*u*) Observe that the Board do not make the award. It is made by the arbitrator, and when made is to be deemed to have been made by the Board. See *In re Kent C. C. and Sandgate L. B.*, [1895] 2 Q. B. 43; 59 J. P. 456.

(*x*) 22 & 23 Vict. c. 59, s. 18, empowers the arbitrator to call for books and documents and administer oaths; s. 19 gives him discretion as to the manner of proceeding with the arbitration; s. 20 enables him to proceed in the absence of parties; s. 21 enables him to make several awards each on part of the matters referred; s. 22 makes the award conclusive; s. 23 gives the arbitrator power to extend the time for making an award; s. 24 prevents the setting aside of an award for irregularity; s. 25 provides that parties shall obey awards; s. 26, that all courts shall give effect to awards; s. 27, that costs shall be in the discretion of the arbitrator; s. 28, that in absence of order, costs are to be borne by parties equally; and s. 29, that submission may be made a rule of court.

THE GAS AND WATER WORKS FACILITIES ACT, 1870.

(33 & 34 VICT. c. 70.) (*y*)

An Act to facilitate in certain cases the obtaining of Powers for the Construction of Gas and Water Works and for the Supply of Gas and Water.

[9th August 1870.]

PRELIMINARY.

1. This Act may be cited for all purposes as the Gas and Water Works Facilities Act, 1870. Short title.

2. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say, Interpretation of terms.

The term "local authority" shall mean the bodies of persons named in the table in Schedule (A.) to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same:

The term "road authority" shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority:

The term "The Lands Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England . . . the Lands Clauses Consolidation Act, 1845; . . . together with . . . the Lands Clauses Consolidation Acts Amendment Act, 1860 (*z*). 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106.

DESCRIPTION OF CASES WITHIN THIS ACT.

3. This Act shall apply where powers are required for all or any of the purposes following: Act to apply to certain cases.

(1) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any district within which there is not an existing company, corporation, body of commissioners, or persons empowered by Act of Parliament to construct such works or to manufacture and supply gas:

(2) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company, corporation, body of commissioners, or persons empowered by Act of Parliament to construct such works and to supply water:

(3) To raise additional capital necessary for any of the purposes aforesaid:

(4) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings:

(5) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and

(*y*) Incorporated with the P. H. A., 1875 by s. 161, *ante*, p. 362, for the purpose of enabling a local authority to supply gas, and amended by 36 & 37 Vict. c. 89, *post*, p. 1574. Preamble repealed by the S. L. R. A., 1893 (No. 2).

(*z*) Words relating to Scotland and Ireland only are here omitted. See the statutes referred to, *ante*, pp. 1321, 1484.

supply gas or to supply water, and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings:

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking" or "water undertaking," according as the same relate to the supply of gas or water; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

PROVISIONAL ORDERS AUTHORISING GAS AND WATER UNDERTAKINGS.

By whom Provisional Orders authorising undertakings may be obtained.

4. Provisional Orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person; and in the construction of this Act the terms "the undertakers" (*a*) shall be deemed to include any such company, companies, or person.

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority of such district shall be necessary before any Provisional Order can be obtained; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any Provisional Order can be obtained, unless the Board of Trade (*b*) in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry (*c*), that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

Notices and deposit of documents by promoters as in schedule.

5. The undertakers intending to make an application for a Provisional Order in pursuance of this Act shall proceed as follows:

(1) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:

(2) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part One of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees, or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such

(*a*) This word applies to the urban sanitary authority, but not, apparently, for this purpose to a rural sanitary authority. See the P. H. A., 1875, ss. 161, 316, *ante*, pp. 362, 649. As to revocation, extension, or amendment of the Provisional Order, see 36 & 37 Vict. c. 89, s. 12, *post*, p. 1574.

(*b*) The L. G. B. are substituted for the Board of Trade in respect of any gasworks established by an urban authority. See the P. H. A., 1875, s. 161, *ante*, p. 362. Power to transfer the powers of the L. G. B. under this Act to county councils exists under s. 10 of the L. G. A., 1888, and the Local Government (Transfer of Powers) Act, 1903, but has never been exercised.

(*c*) See 36 & 37 Vict. c. 89, s. 13, *post*, p. 1574.

distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:

(3) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part Two of the same Schedule, according to the regulations therein contained:

(4) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part Three of the same Schedule, according to the regulations therein contained.

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Parliamentary Documents Deposit Act, 1837; and all the provisions of that Act shall apply accordingly. 7 Will. 4 & 1 Vict. c. 83.

Board of Trade to consider application and objection.

6. The Board of Trade shall consider the application, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application (*d*).

Board of Trade to make Provisional Order.

7. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade may settle and make a Provisional Order accordingly.

Every such Provisional Order if it relates to gasworks shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the Order; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the Order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

Form and contents of Provisional Order.

Every such Provisional Order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act (*e*); but so that any such Provisional Order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited.

(*d*) Objections must be lodged on or before January 15th next ensuing the making of the application. See the Order of the L. G. B., dated September 7th, 1891 (Stat. R. & O., 1891, p. 308; Stat. R. & O., *Rev.* 1904, *VI.*, *Gas*, p. 8), and Appendix II., *post.* A local inquiry may be ordered under 36 & 37 Vict. c. 89, s. 13, *post*, p. 1574, and is always held.

(*e*) See s. 9, *infra.*

Costs of Order.

The costs of and connected with the preparation and making of each Provisional Order shall be paid by the undertakers, and the Board of Trade may require the undertakers to give security for such costs before they proceed with the Provisional Order.

Publication of Provisional Order.

8. When a Provisional Order has been made as aforesaid and delivered to the undertakers, the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part Four of the Schedule (B.) to this Act.

Confirmation of Provisional Order by Act of Parliament.

9. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any Provisional Order which shall have been published as aforesaid, not later than the twenty-fifth of April (*f*) in any year procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the Schedule to the Bill; but until confirmation by Act of Parliament a Provisional Order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the Order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming any Provisional Order under this Act shall be deemed a public general Act (*g*).

Incorporation of general Acts in Provisional Order.

10. The provisions of the Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted by any such Provisional Order, and except as to the following provisions, namely,—

(1.) With respect to the purchase and taking of lands otherwise than by agreement:

(2.) With respect to the entry upon lands by the promoters of the undertaking.

Where a Provisional Order authorises a gas undertaking the provisions of the Gasworks Clauses Act, 1847 (*h*), shall be incorporated with such Provisional Order, save where the same are thereby expressly varied or excepted.

10 & 11 Vict. c. 15.

Where a Provisional Order authorises a water undertaking the provisions of the Waterworks Clauses Act, 1847, and of the Waterworks Clauses Act, 1863 (*i*), shall be incorporated with such Provisional Order, save where the same are thereby expressly varied or excepted.

10 & 11 Vict. c. 17.
26 & 27 Vict. c. 93.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act (*k*).

Cesser of powers at expiration of prescribed time.

11. If any undertakers empowered by any Provisional Order under this Act to make works do not, within three years from the date of such

(*f*) It is considered that this date applies to the publication of the Order, and not to the introduction of the Bill into Parliament.

(*g*) This last clause has the effect of enabling a local authority to promote a Provisional Order without the sanction of ratepayers and without observing the other conditions required by the Borough Funds Acts, as those Acts do not apply to public general Acts.

(*h*) 10 & 11 Vict. c. 15, *ante*, p. 1393.

(*i*) 10 & 11 Vict. c. 17, *ante*, p. 1405, and 26 & 27 Vict. c. 93, *ante*, p. 1488.

(*k*) See also the P. H. A., 1875, s. 316, *ante*, p. 649. For special provisions as to accounts generally inserted in Provisional Orders in favour of urban authorities, see Michael and Will on Gas and Water, 6th ed., p. 797.

Provisional Order, or within any shorter period prescribed therein, complete the works; or,

If within one year of the date of the Provisional Order, or within such shorter time as is prescribed in the Provisional Order, the works are not substantially commenced; or,

If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the Provisional Order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

Gas rents and water rates.

12. The undertakers empowered by any Provisional Order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such Provisional Order, rents and rates respectively not exceeding the sums specified in such Provisional Order, subject and according to the regulations therein specified.

Company not exempt from provisions of general Act.

13. Nothing in any Provisional Order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks, passed after the passing of this Act (*l*), or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the Provisional Order.

Queen in Council may substitute any department for Board of Trade for the purposes of this Act.

14. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for her Majesty at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connection with the Board of Trade shall be done by or in connection with such substituted department.

Act not to apply to metropolis. 18 & 19 Vict. c. 120.

15. This Act shall not apply to any place within the metropolis, as the same is defined in the Metropolis Management Act, 1855.

SCHEDULE A. (*m*)

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
England and Wales.	
Boroughs (1)	The mayor, aldermen, and burgesses acting by the council.
Any place other than a borough, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.

(1) "Borough" shall mean any place for the time being subject to the Municipal Corporations Act, 1835 (*n*).

(*l*) See 36 & 37 Vict. c. 89, *post*, p. 1574.

(*m*) Parts of this Schedule relating only to Scotland or Ireland are here omitted.

(*n*) Now the Municipal Corporations Act, 1882. See s. 242 (3) of that Act.

SCHEDULE A.—*continued.*

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (*o*).	The local board.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.
. . .	. . .

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

[S. 5 (2), *ante.*]

Advertisement in October or November of intended Application.

(1) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed new works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works, if any, will be made.
4. The times and places at which the deposit under Part II. of this Schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as hereinafter provided.

(2) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district is situate in England . . .

PART II.

S. 5 (3), *ante.*]

Deposit on or before 30th November.

(1) The undertakers are to deposit—

1. A copy of the advertisement published by them.
2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.
3. A proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf (*p*).

(*o*) See the P. H. A., 1875, s. 313, *ante*, p. 649.
(*p*) See note (*d*), *ante*, p. 1499.

(2) The documents aforesaid are to be deposited for public inspection—
In England . . . in the office of the clerk of the peace for every county, riding, or division . . . which will be affected by the proposed undertaking, or in which any proposed new work will be made.
(3) The documents aforesaid are also to be deposited at the office of the Board of Trade.

Part III.

Deposit on or before 23rd December. [S. 5 (4), *ante.*]

(1) The undertakers are to deposit at the office of the Board of Trade—
1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
2. A printed draft of the Provisional Order as proposed by the undertakers, with any schedule referred to therein.
3. An estimate of the expense of the proposed new works, if any, signed by the persons making the same.

(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3) The memorial of the undertakers (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:

[*Short Title of Undertaking.*]

To the Board of Trade.
The memorial of the undertakers of [*short title of undertaking*]:
Showeth as follows:

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,
C. D.,
Undertakers.

Part IV.

Deposit and Advertisement of Provisional Order when made. [S. 8, *ante.*]

(1) The undertakers are to deposit printed copies of the Provisional Order when settled and made, for public inspection in the offices of clerks of the peace . . . where the documents required to be deposited by them under Part II. of this Schedule were deposited.

(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of each.

(3) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

THE TRAMWAYS ACT, 1870.

(33 & 34 VICT. c. 78) (*q*).

An Act to facilitate the Construction and to Regulate the Working of Tramways.
[9th August 1870.]

PRELIMINARY.

Short title.

1. This Act may be cited for all purposes as "The Tramways Act, 1870."

Limitation of Act.

2. This Act shall not extend to Ireland.

Interpretation of terms.

3. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say,

The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part I. of the Schedule A. to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same:

The term "road authority" shall mean, in the districts specified in the table in Part II. of the Schedule A. to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road (*r*):

The term "district," in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

8 & 9 Vict. c. 18.

23 & 24 Vict. c. 106.

The term "the Lands Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England, the Lands Clauses Consolidation Act, 1845; . . . together with . . . the Lands Clauses Consolidation Acts Amendment Act, 1860 (*s*):

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

(*q*) This Act gives to local authorities important powers with regard to tramways and tramway companies, and is, therefore, included in this Appendix. The preamble was repealed by the S. L. R. A., 1893 (No. 2). The subject belongs rather to the law of highways than to that of public health, and the notes are, therefore, chiefly confined to references to decided cases.

(*r*) See *Wolverhampton Tramways Co., Ltd.* v. *G. W. Rail. Co.*, cited in the note to s. 32, *post*, p. 1517.

An agreement between a county council and a district council, whereby the latter agree to maintain a main road under s. 11 of the L. G. A., 1888, *ante*, p. 736, does not affect the rights of the former as the road authority within the above definition (*Stockport and Hyde Highway Board* v. *Cheshire C. C.* (1891), 61 L. J. Q. B. 22; 55 J. P. 808).

(*s*) Words in this clause relating to Scotland only are here omitted. See the statutes referred to, *ante*, pp. 1321, 1484.

PART I.

PROVISIONAL ORDERS AUTHORISING THE CONSTRUCTION OF TRAMWAYS.

By whom Provisional Orders authorising the construction of tramways may be obtained.

4. Provisional Orders (*t*) authorising the construction of tramways (*u*) in any district may be obtained by—

(1) The local authority of such district; or by—

(2) Any person, persons, corporation, or company, with the consent of the local authority of such district; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of the Highway Acts (*x*):

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as the "promoters."

Application for a Provisional Order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the Schedule A. to this Act annexed.

Where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any Provisional Order can be obtained.

The Board of Trade may in certain cases dispense with the consent of local or road authority.

5. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Board of Trade may, nevertheless, make a Provisional Order authorising the construction of such tramway if they are satisfied, after inquiry (*y*), that two-thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order.

Notices and deposit of documents by promoters as in schedule.

6. The promoters intending to make an application for a Provisional Order shall proceed as follows:

(1) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement (*z*); and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the Standing Orders (if any) of both Houses of Parliament for the time being in force with respect to Bills for the construction of tramways:

(*t*) Rules have been issued by the Board of Trade with respect to Provisional Orders under this Act. See s. 64, *post*, p. 1533, and notes thereto. The construction of a tramway without statutory authority may amount to a nuisance at common law (*R.* v. *Train* (1862), 2 B. & S. 640; 31 L. J. M. C. 169). The local authority may lawfully agree with a tramway company not to apply for powers to construct nor to give their consent to the construction by others of tramways on roads within their district without first calling on the particular tramway company with which the agreement is made to apply for powers themselves (*Att.-Gen.* v. *Hastings Corporation* (1902), 67 J. P. 165; 19 T. L. R. 9).

(*u*) As to income tax on tramways, see *London C. C.* v. *Edwards* (1909), 73 J. P. 213; 100 L. T. 444; *Poole Corporation* v. *Bournemouth Corporation* (1911), 75 J. P. 13; 103 L. T. 828.

(*x*) *I.e.*, the Highway Acts, 1835, 1862, and 1864. See s. 1 of the last-mentioned Act.

(*y*) As to local inquiries, see s. 63, *post*, p. 1532. But the non-consenting local authority may be heard against the Bill for confirming the Provisional Order (*Glasgow Corporation Tramways Bill* (1878), 2 Cl. & R. 95).

(*z*) See the form prescribed in Part I. of Schedule B., *post*, p. 1534, a reference to which is obviously omitted here by an oversight.

(2) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part II. of the same Schedule, according to the regulations therein contained:

(3) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part III. of the same Schedule, according to the regulations therein contained:

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Parliamentary Documents Deposit Act, 1837; and all the provisions of that Act shall apply accordingly.

7 Will. 4 & 1 Vict. c. 83.

Consideration of application and objections.

7. The Board of Trade shall consider the application, and may, if they think fit, direct an inquiry (*a*) in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint (*b*), and shall determine whether or not the promoters may proceed with the application.

Power for Board of Trade to make Provisional Order.

8. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade may settle and make a Provisional Order accordingly.

Form and contents of Provisional Order.

Every such Provisional Order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade, according to the nature of the application and the facts and circumstances of each case, think fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such Provisional Order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road (*c*), or upon land taken by agreement (*d*).

Regulations as to construction of tramways in towns.

9. Every tramway in a town (*e*) which is hereafter authorised by Provisional Order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorised by any Provisional Order to be so laid that for any distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one-third of the owners or one-third of the occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner and at the prescribed time express their dissent from any tramway being so laid (*f*).

(*a*) As to local inquiries, see s. 63, *post*, p. 1532.

(*b*) See the regulations made under s. 64, *post*, p. 1533.

(*c*) Defined by s. 3, *ante*, p. 1504.

(*d*) If compulsory powers of taking land are required, they must be obtained by private Bill. See also s. 15, *post*, p. 1508. A company had statutory power to lay a second line of tramway on obtaining certain consents, but without obtaining such consents they laid the rails:—*Held*, that they were liable for a trespass, and that as damages they were liable in any event for the cost of restoring the road (*Bideford U. D. C.* v. *Bideford Rail. Co.* (1904), 68 J. P. 123).

(*e*) See note (*o*) to s. 93 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 1351.

(*f*) The Order will be good if it dispenses with the 9 ft. 6 in. limit in the absence of express dissent of the occupiers (*Edinburgh Street Tramways* v. *Black* (1873), L. R. 2 Sc. App. 336; 37 J. P. 692). See also *Wilkinson* v. *Newcastle-on-Tyne Corporation* (1902), 18 T. L. R. 332.

10. Every such Provisional Order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade shall deem necessary and proper (*g*). Nature of traffic on tramways and tolls to be specified in Provisional Order.

11. The costs of and connected with the preparation and making of each Provisional Order shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the Provisional Order. Costs of Order.

12. After a Provisional Order is ready, and before the same is delivered by the Board of Trade, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit, in such bank any security of the prescribed nature the then value of which is not less than such sum of money (*i*). Promoters to deposit £4 per cent. on estimate in prescribed bank.

13. When a Provisional Order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part IV. of the Schedule B. to this Act. Publication of Provisional Order as in Schedule.

14. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication, procure a Bill to be introduced into either House of Parliament in relation to any Provisional Order which shall have been published as aforesaid not later than the twenty-fifth of April in any year, for an Act to confirm the Provisional Order, which shall be set out at length in the Confirmation of Provisional Order by Act of Parliament.

(*g*) The working of omnibuses in connection with the tramways must be specially provided for if the local authority contemplate such an addition to the tramways. See *Att.-Gen.* v. *London C. C.*, [1902] A. C. 165; 66 J. P. 340. The question is not whether the business can be conveniently or advantageously conducted with the tramway business, but whether it is by necessary implication incidental or accessory to it, see *per* Farwell, J., in *Att.-Gen.* v. *Manchester Corporation*, [1906] 1 Ch. 43, 656; 70 J. P. 201, where the corporation were restrained from carrying on a parcels delivery service in connection with their tramway undertaking. As to the conveyance of mails by tramways, see the Conveyance of Mails Act, 1893. In *Clogher Tramway Co., Ltd.* v. *R.* (1891), 30 L. R. Ir. 316, it was held that a steam tramway constructed by a company authorised thereto by Provisional Order, under the Tramways (Ireland) Act, 1860, confirmed by special Act, was not a railway within the meaning of the Post Office Parcels Act, 1882, and that the rights and liabilities of the company and the Postmaster-General respectively as regarded the conveyance of parcels thereon, were regulated solely by the special Act confirming the Provisional Order.

These costs are to be taxed on the Chancery, and not on the parliamentary scale (*In re Morley* (1875), L. R. 20 Eq. 17). And see *In re Peterson*, [1909] 2 Ch. 398.

As to the costs of a parliamentary agent employed by a promoter who is not mentioned in the Act and does not become a member of the company, see *Re Skegness Tramways Co.* (1889), 41 Ch. D. 215.

(*i*) This section has no application to a local authority. See the Parliamentary Deposits and Bonds Act, 1892; *Re Bradford Tramways Co.* (1876), 4 Ch. D. 18; *Re Lowestoft, Yarmouth and Southwold Tramways Co.* (1877), 6 Ch. D. 484; *Re Tynemouth Borough Tramways Co.* (1875), 33 L. T. 8; *Ex parte Chambers*, [1893] 1 Ch. 47; *Re Colchester Tramways Co.*, [1893] 1 Ch. 309; *Re Dudley and Kingswinford Tramways Co.* (1893), 63 L. J. Ch. 108; *Ex parte Bradford and District Tramways Co.*, [1893] 3 Ch. 463; *Turpin* v. *Somerton, etc. Tramway Co.*, [1900] W. N. 94; *Att.-Gen.* v. *Bournemouth Corporation*, [1902] 2 Ch. 714. As to the claim of solicitors and parliamentary agents for their costs, see *In re Manchester Tramways Co.*, [1893] 2 Ch. 638.

Schedule to the Bill; and until confirmation, with or without amendment, by Act of Parliament, a Provisional Order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the Order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming a Provisional Order under this Act shall be deemed a public general Act (*k*).

Incorporation of general Acts in Provisional Order.

15. The provisions of the Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted by any such Provisional Order, and except as to the following provisions, namely,—

(1) With respect to the purchase and taking (*l*) of lands otherwise than by agreement:

(2) With respect to the entry upon lands by the promoters of the undertaking.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act.

Power of Board of Trade to revoke, amend, extend, or vary Provisional Order.

16. The Board of Trade on the application of any promoters empowered by a Provisional Order may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order.

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order.

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order, and until such confirmation such further Provisional Order shall not have any operation.

Power to authorise joint work.

17. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a Provisional Order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and separate parts of such tramway as last aforesaid; and the form of the Provisional Order may be adapted to the circumstances of the case.

Cesser of powers at expiration of prescribed time

18. If the promoters empowered by any Provisional Order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or,

If within one year from the date of the Provisional Order, or within such

(*k*) See note (*g*) to s. 9 of the Gas and Water Works Facilities Act, 1870, *ante*, p. 1500.

(*l*) If compulsory powers are required they must be obtained by private Bill.

The erection, by a tramway company which was empowered by their special Act to erect on in over or under any street or road poles and posts, of a pillar on land belonging to the plaintiff forming part of the highway subject to being used by him for exposal of furniture for sale was held not to be a taking of land within the meaning of the Lands Clauses Acts, but only an exercise of their special statutory powers (*Escott* v. *Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135). As to whether a local authority is entitled to use land vested in them as a public park for the purpose of road-widening to facilitate the construction of a tramway under a Provisional Order, see *Att.-Gen.* v. *Folkestone Corporation*, Times, April 29th, 1903.

shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the Provisional Order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade; and as to so much of the same as is then completed the Board of Trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the Board of Trade in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland, to the effect that a tramway has not been completed and open for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension (*m*).

Local authority may lease or take tolls.

19. When a tramway has been completed under the authority of a Provisional Order by any local authority, or where any local authority has under the provisions of this Act (*n*) acquired possession of any tramway, such authority may, with the consent of the Board of Trade, and subject to the provisions of this Act, by lease, to be approved of by the Board of Trade, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised (*o*); or such authority may leave such tramway open to be used by the public, and may in respect of such user demand and take the tolls and charges authorised; but nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages (*p*).

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the Schedule C. to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade.

(*m*) See note to s. 12, *ante*, p. 1507. The notice referred to in this section is not the exclusive or only evidence of the non-commencement of the works that the court can receive. The works mean the physical works, and therefore where nothing has been done but the entering into contracts for the supply of dynamos, plant, and cars, the works have not been substantially commenced within the meaning of this section (*Att.-Gen.* v. *Bournemouth Corporation*, [1902] 2 Ch. 714). The only remedy of a private person for compelling the carrying out of the statutory powers is by complaint to the Board of Trade. The giving of the powers is no longer regarded as a bargain between the promoters and the public (*York and North Midland Rail. Co.* v. *R.* (1853), 1 El. & Bl. 858; 22 L. J. Q. B. 225; *R.* v. *G. W. Rail. Co.* (1894), 62 L. J. Q. B. 572). But there may be special provision in the Act, see *Devonport Corporation* v. *Plymouth, Devonport and District Tramway Co.* (1884), 49 J. P. 405; 52 L. T. 161.

(*n*) See s. 43, *post*, p. 1523.

(*o*) See note (*u*) on p. 1505, *ante*. See also *Salford Corporation* v. *Eccles Corporation*, [1912] A. C. 465; 76 J. P. 249, where a licence granted without the consent of the Board of Trade was held to be *ultra vires*.

(*p*) This last restriction is frequently removed in Provisional Orders.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the Board of Trade, by lease, demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said Board may approve.

Every such lease shall imply a condition of re-entry if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees" (*q*).

How expenses to be defrayed.

20. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a Provisional Order, and carrying into effect the purposes of such Provisional Order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount and is by reason of such limitation insufficient for the payment of such expenses, the Board of Trade may, by the Provisional Order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses.

Such local authority may, for the purposes of such Provisional Order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such local rate; but the exercise of the above-mentioned power shall be subject to the following regulations:

(1) The money so borrowed shall not exceed such sum as may be sanctioned by the Board of Trade:

(2) The money may be borrowed for such time, not exceeding thirty years, as such local authority, with the sanction of the Board of Trade, shall determine; and, subject as aforesaid to the repayment within thirty years, such local authority may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other Government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local authority may determine.

10 & 11 Vict. c. 16.

The provisions of the Commissioners Clauses Act, 1847, with respect to

(*q*) Apart from the express provisions of this section undertakers cannot grant a lease of their statutory powers (see *per* Lord BLACKBURN, in *Att.-Gen.* v. *G. E. Rail. Co.* (1880), 5 App. Cas. 473, at p. 484; *Winch* v. *Birkenhead, etc. Rail. Co.* (1852), 5 De G. & S. 562). As to the stamp on the lease, see *British Electric Traction Co.* v. *Commissioners of Inland Revenue*, [1902] 1 K. B. 441; 66 J. P. 83. For forms of leases see the Encyclopædia of Forms and Precedents, Vol. XIV., pp. 579, 588, 596. See also as to construction of clause in a lease for relieving the lessors from owners' assessments, *Glasgow Corporation* v. *Glasgow Tramway and Omnibus Co.*, [1898] A. C. 631. Lessees cannot sub-assign (*Omnibus Conveyance Co.* v. *Liverpool United Tramways and Omnibus Co.* (1882), 26 Sol. J. 580).

the mortgages to be executed by the commissioners (*r*), shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

For the purposes of such incorporation the terms "the special Act," and "the commissioners," shall be construed to mean respectively a Provisional Order under this Act, and the local authority.

Such local authority shall keep separate accounts of all moneys paid by them in applying for, obtaining, and carrying into effect any such Provisional Order, and in the repayment of moneys borrowed, and of all moneys received by them by way of rent or tolls in respect of the tramway authorised thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such Provisional Order, there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent or tolls in respect of the tramway authorised by such Provisional Order, such moneys shall be applied by them to the purposes for which the local rate may be by them applied.

21. [*Metropolitan Board of Works* (*s*) *may, for carrying Provisional Order into effect, create stock under the Metropolitan Board of Works* (*Loans*) *Act,* 1869.]

PART II.

CONSTRUCTION OF TRAMWAYS (*t*).

As to incorporation of Parts II. and III. of this Act with Provisional Order and special Acts.

22. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorised by any Provisional Order or Act of Parliament, and shall be incorporated with such Provisional Order or Act, and all the said

(*r*) 10 & 11 Vict. c. 16, ss. 75—88 inclusive.

(*s*) Now the London C. C. (51 & 52 Vict. c. 41, s. 40 (8)).

(*t*) A tramway company authorised to construct and maintain tramways with all proper rails, plates, works, and conveniences connected therewith were, notwithstanding the powers contained in this Act, held liable for a nuisance created by smells arising from their stables (*Rapier* v. *London Tramways Co.*, [1893] 2 Ch. 588). And where a tramway company after a heavy fall of snow cleared their track by means of a snow plough, and heaped up the snow on the sides of the streets, and then scattered salt upon the track, it was held that although they had obtained the consent of the local authority, and that authority took no steps to clear away the briny slush which was thereby caused, and rendered the street dangerous to other traffic, the tramway company were liable for the nuisance so created (*Ogston* v. *Aberdeen District Tramways Co.*, [1897] A. C. 111; 61 J. P. 436). But where a corporation purporting to act in the exercise of their powers under their special Tramways Act, which incorporated this Act, and authorised the construction of an electric tramway, erected a pole and a fuse-box on the footpath close to the entrance of the plaintiffs' premises, it was held that their statutory powers authorised them to use the pavement for the purpose of doing that which was necessary for making their tramway an electrical tramway, and that the nuisance which they were authorised to commit could not be interfered with unless the plaintiffs could prove that the powers conferred on the corporation had been abused (*Goldberg* v. *Liverpool Corporation* (1900), 82 L. T. 362; 16 T. L. R. 320). And see *Wandsworth Borough Council* v. *London United Tramways* (1901), *Ltd.* (1905), 69 J. P. 340; 21 T. L. R. 529, as to breaking up streets for the purpose of connecting the tramway with the power station by means of an underground electric cable.

By an agreement between the corporation and a tramway company in the city, it was agreed that the company should, under instructions from the city, keep their track free from ice and snow:—*Held*, that the company were not bound to remove from the streets altogether the snow and ice cleared off the tramway track, and that the words "under instructions from the city," only applied to the extent of the work to be done, not to the particular method to be adopted for doing it. The city also granted to the company all licences, rights, and privileges necessary for the proper and efficient use by electric power to operate cars in the manner successfully in use elsewhere:—*Held*, that the city was not at liberty to prohibit the company from using electric sweepers which had been found successful in other cities (*Montreal City* v. *Montreal Street Railway*, [1903] A. C. 482).

provisions of this Act, save so far as they shall be expressly varied or excepted by any such Provisional Order or Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said Provisional Order or Act, and be construed therewith as forming one Provisional Order or Act, as the case may be.

"Special Act."

23. In Part II. and Part III. of this Act, the term "special Act" shall be construed to mean any Act of Parliament which shall be hereafter passed or any Provisional Order authorising the construction of a tramway, and with which the said Parts of this Act shall be incorporated as aforesaid.

"Promoters."

24. The term "the promoters" shall mean any person, persons, corporation, company, or local authority authorised by special Act to construct a tramway.

Mode of formation of tramways.

25. Every tramway which is hereafter authorised by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon railways of a gauge of four feet eight inches and half an inch; and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road; and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner (*u*).

Power to break up streets, etc.

26. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorised, or any part or parts thereof respectively, may open and break up any road (*x*), subject to the following regulations:

1. They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work:
2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority (*y*), unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work:
3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence (*y*):
4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between

(*u*) If the tramway is opened without the required certificate, the Attorney-General may obtain an injunction against its working (*Att.-Gen.* v. *Southall, Ealing, and Shepherd's Bush Tramways Co.*, Times, July 10th, 1874). When the special Act directs compliance with deposited plans and sections, they are regarded as embodied in the statute (*Edinburgh Street Tramways Co.* v. *Black* (1866), L. R. 2 H L. Sc. 336; 37 J. P. 692). Necessary consents required by statute must also be obtained (*Devonport Corporation* v. *Plymouth, Devonport, and District Tramway Co.* (1884), 52 L. T. 161).

(*x*) Defined by s. 3, *ante*, p. 1504. As to whether this includes footways, see *Hyde Corporation* v. *Oldham Tramways Co.* (1900), 64 J. P. 596; 16 T. L. R. 492.

(*y*) See the notes to s. 28, *post*, p. 1513.

any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

27. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations, namely, Completion of works and reinstatement of road.

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby:
2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night:
3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

28. The promoters shall, at their own expense, at all times maintain (*z*) and keep in good condition and repair (*a*), with such materials and in such Repair of part of road where tramway is laid.

(*z*) The removal of snow from the portion of a road lying between the rails of a tramway is not "maintenance" within the meaning of the section unless the fall of snow is of such a depth as to render the road impassable (*Acton U. D. C.* v. *London United Tramways*, [1909] 1 K. B. 68; 73 J. P. 6). See also note (*t*), *ante*, p. 1511.

(*a*) For a case where a nuisance was caused by the use of creosoted wood blocks, see *West* v. *Bristol Tramways Co.*, [1908] 2 K. B. 15; 72 J. P. 243.

manner as the road authority shall direct, and to their satisfaction (*b*), so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway (*c*). If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night: Provided always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters (*d*).

(*b*) *I.e.*, their reasonable satisfaction. The question as to whether the authority ought reasonably to be satisfied must go to arbitration under s. 33, *post*, p. 1518 (*R.* v. *Garrett and Hammersmith Borough Council, Ex parte London United Tramways, Ltd.* (1909), 73 J. P. 188; 100 L. T. 533). See also the cases cited in note (*m*), p. 1518, *post*.

(*c*) By the Norwich Electric Tramways Act, 1897, the defendant company were to maintain and keep in good condition "the junction of the paving laid and maintained by the company with the surface laid and maintained by the corporation":—*Held*, that the word "junction" could not only mean the mere point or place where the two surfaces met, but that the defendant company had to maintain an even contour of the road at the junction of the two surfaces (*Norwich Corporation* v. *Norwich Electric Tramways Co.* (1904), 91 L. T. 558). By the same Act the corporation were empowered to do the work necessary for the repair and maintenance of the road, and the company were required in such a case to repay to the corporation the expense reasonably incurred with the addition of 5 per cent. on such expense. The surface laid and maintained by the corporation became worn down below the level of the paving laid and maintained by the company, and the corporation executed certain work to obviate inconvenience to the public owing to the state of the road. It was held that such expenses were incurred in maintaining and keeping in good condition the junction of the pavement laid and maintained by the company with the surface laid and maintained by the corporation and therefore recoverable by the corporation (*In re Norwich Corporation and Norwich Electric Tramways Co., Ltd.* (1908), 72 J. P. 178; 99 L. T. 133). As to the meaning of the word "junctions" in relation to the construction of the tramway itself, see *Wilkinson* v. *Newcastle-on-Tyne Corporation* (1902), 18 T. L. R. 332. As to the liability of a tramway company in respect of the repair of a bridge widened by them, see *Teddington U. D. C.* v. *L. & S. W. Rail. Co.* (1910), 74 J. P. 121; 102 L. T. 328.

(*d*) The raising of sleepers and rails to the level of the road, or the raising of the stone packing to the level of the rails, is maintaining and keeping the road in good condition under this section, and does not require the superintendence of the road authority under s. 26 (*St. Luke's Vestry* v. *North Metropolitan Tramways Co.* (1875), 1 Q. B. D. 760; 40 J. P. 806). Where a company had statutory power to run tramcars by steam and had statutory running powers over the line of another company, it was held that this did not authorise them to run over that line when it was defective, and they were held liable in damages to a person who was injured through a car running off the line by reason of its being defective (*Sadler* v. *South Staffordshire, etc. Tramways Co.* (1889), 23 Q. B. D. 17; 53 J. P. 694). The obligation of a tramway company under this section involves the duty by temporary expedients or permanent work of providing against temporary or recurrent sources of danger to traffic, and failure to discharge this obligation will make the company liable in damages to any person injured by such neglect. Thus the company were held liable for an accident which occurred by reason of their having neglected to sand the road

Road authority and promoters may contract for paving roads on which tramways are laid.

29. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair (*e*).

Provision as to gas and water companies.

30. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same, alter the position of any mains or pipes for the supply of gas or water, or any tubes, wires (*f*), or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,)

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires or apparatus, or not, give seven days notice to the company, persons, or person to whom such mains or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice (*g*) to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend, after receiving not less than forty-eight hours

in slippery weather (*Dublin United Tramways Co.* v. *Fitzgerald*, [1903] A. C. 99; 67 J. P. 229).

As to injury to passengers owing to the negligence of a contractor, see *City of Birmingham Tramways Co., Ltd.* v. *Law*, [1910] 2 K. B. 965; 74 J. P. 355.

(*e*) Where a tramway company entered into contract with a road authority under this section for the repair of that portion of the road upon which the tramway was laid, it was held that the liability for damage occasioned by the non-repair of that part of the road which would, but for such contract, be cast by s. 28 upon the tramway company, was transferred to the road authority (*Howitt* v. *Nottingham and District Tramways Co.* (1883), 12 Q. B. D. 16). This decision seems to have been questioned in *Steward* v. *North Metropolitan Tramways Co.* (1885), 16 Q. B. D. 556; 50 J. P. 324; but it has since been followed in *Alldred* v. *West Metropolitan Tramways Co.*, [1891] 2 Q. B. 398; 55 J. P. 824; and that case has been followed in *Barnett* v. *Poplar Borough Council*, [1901] 2 K. B. 319.

(*f*) The promoters may alter the position of the wires of a railway company, and for that purpose may enter upon the land belonging to the railway company (*In re Rhondda U. D. C. and the Taff Vale Rail. Co.* (1908), 72 J. P. 45; 97 L. T. 892).

(*g*) This notice may be given at any time until the tramway is constructed (*Hastings Tramways Co.* v. *Hastings and St. Leonards Gas Co.*, [1906] 2 Ch. 578; 70 J. P. 540).

notice for that purpose, which notice the promoters are hereby required to give:

2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof, and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct:

3. The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs:

4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas:

5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which the supply shall be so interrupted.

For protection of sewers, etc.

31. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until they shall have given to the proper authority fourteen days previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters under the provisions of this Act, the same shall

thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works (*h*).

Rights of authorities and companies, etc. to open roads.

32. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority (*i*) for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes (*j*), but in the exercise of such power every such local authority, road authority, company, body, or person shall be subject to the following restrictions; (that is to say,)

1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:
2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work (*k*):
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid:
4. Whenever for the purpose of enabling them to execute such work

(*h*) As to the sufficiency of notices under this section, see *Brentford U. D. C.* v. *London United Tramways Co.*, Times, March 30th, 1901.

(*i*) A railway company who are liable to maintain and repair a bridge over their line, with the approaches and the road thereon, are in respect of such road a road authority within the meaning of this section. Where a railway company for the reconstruction of such a bridge had, after giving the notices specified by this section, removed the rails of a tramway running over the bridge, and temporarily stopped the traffic, it was held that they were not liable to the tramway company for injury to the tramway, loss of traffic, or cost of reinstating the rails, provided they had caused as little detriment or inconvenience as the circumstances admitted. It was held also that if they caused more than the least detriment and inconvenience which the circumstances admitted, they would be liable to the extent to which they had exceeded such least possible detriment and inconvenience (*Wolverhampton Tramways Co., Ltd.* v. *G. W. Rail. Co.* (1886), 56 L. J. Q. B. 191; 56 L. T. 892).

(*j*) A telephone company acting under a licence from the Postmaster-General pursuant to the Telegraph Acts, 1863, 1878, and 1892, need not obtain the previous consent of a tramway company before proceeding to break up a street or public road on which tramways are laid, for the purpose of laying telephone wires, even though the tramway company is liable under s. 28 for the repair of that street or road (*Bristol Tramways and Carriage Co.* v. *National Telephone Co.*, [1899] 2 Ch. 382; 63 J. P. 583).

(*k*) A gas company executed work in roads along which a tramway ran, part of which work consisted in pipes so laid for the first time since the construction of the tramway, and connecting the same with the mains which had been laid down before the construction of the tramway. In one instance during the progress of the work, where there was a double tram line, the cars of one line were diverted to the other, such diversion being at the request of the gas company. In other instances cars were merely slowed down or stopped for a short time while the workmen got out of the trenches. By reason of the existence of the tramway additional expense was imposed upon the gas company in connecting the new pipes with their mains. It was held that the gas company were entitled to recover such additional expense from the tramway company under sub-s. 5, *supra*, inasmuch as there had been an interruption of the traffic on the tramway within the meaning of sub-s. 2, and the connection of a new service pipe with the main involved an alteration of the main; *but* that the proviso in sub-s. 5 does not apply in the case of work which is not such as to interrupt the traffic on the tramway (*In re Bristol Gas Co. and Bristol Tramways and Carriage Co., Ltd.*, [1910] 1 K. B. 114; 74 J. P. 35).

the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:

5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters (*l*).

Difference between promoters and road authority, etc.

33. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control, exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs (*m*).

(*l*) See note (*k*), *ante*, p. 1517.

(*m*) By a local Tramway Act incorporating the above Act, the space between the rails and for a distance of eighteen inches beyond each external rail was to be paved by the company, to the satisfaction of the local authority, with wood or other paving to be approved of by the local authority. On an application by the local authority for a *mandamus* to the company to take up the paving so laid down, it was held that a difference had arisen within the meaning of the above section which ought to be determined by a referee appointed by the Board of Trade, and that the *mandamus* ought not to be granted (*R.* v. *Croydon and Norwood Tramways Co.* (1887), 18 Q. B. D. 39; 51 J. P. 420). And see *R.* v. *Garrett and Hammersmith Borough Council, Ex parte London United Tramways, Ltd.*, *ante*, p. 1514; *R.* (*Corporation of Dublin*) v. *Fitzgibbon*, [1910] 2 I. R. 236. A municipal corporation, as being the road and the local authority, proposed to alter a road within their district on which a tramway had been constructed under this Act, by taking up the existing granite pavement and laying down a wood pavement over the whole of the roadway, including the space between the rails of the tramway and eighteen inches on each side thereof. The company objected to the alteration so far as it concerned the last-mentioned portion of the roadway and claimed to refer the matter under the above section:—*Held*, that the difference was not one within the section, inasmuch as it was not with respect to any interference or control claimed to be exercised by the road authority by virtue of the Act, or to any subject or thing regulated by or comprised in the Act; but with respect to the exercise of a power which belonged to the road authority independently of the Act and was preserved by s. 60 (*Bristol Trams and Carriage Co.* v. *Bristol Corporation* (1890), 25 Q. B. D. 427; 55 J. P. 53). An arbitrator appointed to determine a difference arising under this section has jurisdiction to order gas mains already laid down to be

PART III.

General Provisions.

Carriages.

Power for promoters to use tramways with flange-wheeled carriages, etc.

34. The promoters of tramways authorised by special Act and their lessees may use on their tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail (*n*).

lowered so that any new service pipes might be carried horizontally underneath the concrete bed of the tramway; and he can further order such gas mains to be moved laterally to such a distance as to enable access to be obtained to them without interference with the concrete bed (*Re Ilford Gas Co. and Ilford U. D. C.* (1903), 67 J. P. 239; 88 L. T. 236). The provision for arbitration contained in this section ousts the jurisdiction of the High Court with regard to differences coming within the section, and the objection may be taken in the Court of Appeal, though not taken in the High Court. It was provided by the special Act of a tramway company, with which by s. 22 of the Tramways Act, 1870, Parts II. and III. of that Act were incorporated, that if the company failed to maintain and keep in good condition, to the satisfaction of the corporation, the junction of the paving laid and maintained by the company with the surface laid and maintained by the corporation, the corporation might if they thought fit themselves at any time after seven days' notice to the company do the work necessary for the repair and maintenance of the road, and that the expense reasonably incurred by the corporation in so doing should be repaid to them by the company with 5 per cent. added thereto. The corporation did work by way of repair to roads on which tramways belonging to the company were laid, alleging that such work came within the above provision, which the company denied. In an action by the corporation against the company to recover the expenses, and for a declaration of their rights:—*Held*, that the difference must be settled by arbitration under this section (*Norwich Corporation* v. *Norwich Electric Tramways*, [1906] 2 K. B. 119; 70 J. P. 401). A local Act incorporated ss. 28 and 33 of this Act and imposed a penalty (*inter alia*) for not keeping the rails in repair and so as not to be a danger or annoyance to the ordinary traffic. It was held that the magistrate had jurisdiction to deal with summonses for not keeping the rails in repair as in this instance no question had arisen in regard to the satisfaction of the road authority (*R.* v. *Garrett and Hammersmith Borough Council, Ex parte London United Tramways, Ltd.*, *ante*, p. 1514). A private Act authorised a company to construct a tramway and other works. It provided (*inter alia*) that "unless otherwise agreed in writing" between the parties, the company should complete the tramway within two years and "carry out to the reasonable satisfaction of the council the widenings" authorised by the Act. No such written agreement was in fact entered into. It was held that until an agreement altering the scheme of works was made, there was an absolute statutory obligation on the company to do the works, and that a landowner whose property had been rendered less valuable by the abandonment of the undertaking was entitled to compensation out of the parliamentary deposit (*In re West Yorkshire Tramways Act*, 1906, [1913] 1 Ch. 170). As to reference of differences under a local Act incorporating this section, see *Regent's Canal Dock Co.* v. *London C. C.* (1907), 71 J. P. 201; *Joseph Crosfield & Sons, Ltd.* v. *Manchester Ship Canal Co.*, [1905] A. C. 421; 69 J. P. 441.

(*n*) The promoters are consequently occupiers of the land which is *de facto* occupied by the tramway, and, therefore, they are rateable (*Pimlico, Peckham, and Greenwich Street Tramways Co.* v. *Greenwich Union* (1874), L. R. 9 Q. B. 9; 38 J. P. 117; *Craig* v. *Edinburgh Street Tramways Co.* (1874), 1 Ct. Sess. Cas. (4th ser.), 947; *Melbourne Tramway and Omnibus Co.* v. *Fitzroy Corporation*, [1901] A. C. 153; *Blackpool and Fleetwood Tramroad Co.* v. *Thornton U. D. C.*, [1909] A. C. 264; 73 J. P. 299; *London United Tramways* (1901), *Ltd.* v. *Brentford Union* (1907), 71 J. P. 249; 5 L. G. R. 682). With regard to the use of cars for advertising purposes, see a case on the construction of an agreement (*Griffiths and Millington* v. *Southampton Corporation* (1906), 70 J. P. 179; 22 T. L. R. 301). In rating the undertaking receipts from advertisements must be taken into account (*North Metropolitan Tramways Co.* v. *St. Mary, Islington* (1874), Ryde's Met. Rat. App. 112). As to a contract for advertising on the trams of a company which subsequently becomes merged in a larger undertaking, see *Abrahams* v. *Campbell*, [1911] S. C. 353.

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only (*o*).

No carriage used on any tramway which is hereafter authorised by special Act shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side.

Licences to use Tramways (*p*).

Licences to use the tramway may in certain events be granted to third parties by the Board of Trade.

35. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic in any district it shall be represented in writing to the Board of Trade by the local authority of such district or by twenty inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade may (if they consider that, primâ facie, the case is one for inquiry) direct an inquiry by a referee under this Act into the truth of the representation, and if the referee report that the truth of the representation has been proved to his satisfaction, the Board (*q*) may from time to time grant licences to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorised by the special Act, with carriages to be approved by the Board, subject to the following provisions, conditions, and restrictions; that is to say,

1. The licence shall be for any period not less than one year nor more than three years from the date of the licence, but shall be renewable by the Board, if they upon inquiry think fit:
2. The licence shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the Board, having reference to the cause for granting the licence, shall think right:
3. The licence shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in which and times at which such carriages shall be run:
4. The licences shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways:
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorised for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey:
6. The Board of Trade may at any time after the granting of any licence revoke, alter, or modify the same for good cause shown to them.

(*o*) A locomotive used upon a tramway under a special Act is not subject to the provisions of the Highway Act, 1878, *post*, p. 1672 (*Bell* v. *Stockton and Darlington Steam Tramways Co.* (1887), 51 J. P. 804; 3 T. L. R. 511). A tramcar drawn by horses was held to be a "coach" for the purposes of tolls under 7 Geo. 3, c. lxxiii. (*Plymouth, Stonehouse, and Devonport Tramways Co.* v. *General Tolls Co.* (1896), 75 L. T. 467); and a tramcar is a "stage carriage" for the purposes of the Railway Passenger Duty Act, 1842, s. 13, as to overcrowding (*Brian* v. *Aylward* (1902), 18 T. L. R. 371), and of an Act as to painting up the number of passengers to be carried (*Black* v. *Neilson* (1897), 25 Rettie, 98).

(*p*) The following sections deal with licences by the Board of Trade, enabling persons other than the undertakers to use the tramways. For a case of a *lease* by a corporation to a tramway company pursuant to a local Act, see *R.* v. *Devonport JJ., Ex parte Devonport Tramways Co.* (1909), 73 J. P. 393; 101 L. T. 424.

(*q*) For a licence granted by a corporation, pursuant to a local Act which required the consent of the Board of Trade being held to be *ultra vires* where such consent was not obtained, see *Salford Corporation* v. *Eccles Corporation*, [1912] A. C. 465; 76 J. P. 249.

36. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

In default of payment of tolls licensee's carriages may be detained and sold.

37. Every licensee shall on demand give to an officer or servant authorised in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

Licensees to give account of passengers carried by them.

38. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

Licensees not giving account of passengers carried liable to penalty.

39. If any dispute arise concerning the amount of the tolls due to the promoters or to their lessees from any licensee, or concerning the charges occasioned by any detention or sale of any carriage under the provisions herein contained, the same shall be settled in England by two justices . . . and it shall be lawful for the promoters or their lessees in the meanwhile to detain the carriage, or (if the case so require) the proceeds of the sale thereof (*r*).

Disputes as to amount of toll to be settled by justice.

40. Every licensee shall be answerable for any trespass or damage done by his carriages or horses, or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and, without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices . . . either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters, lessees, or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds (*r*).

Owners of carriages liable for damage done by their servants.

Discontinuance of Tramways.

41 (*s*). If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a

Tramways to be removed in certain cases.

(*r*) Words relating to Scotland only are omitted from this section.

(*s*) This section relates to the discontinuance of a tramway service. For cases of abandonment of the undertaking (before the work is commenced or completed), decided under the Parliamentary Deposits and Bonds Act, 1892, see *In re Peckham, Dulwich and Crystal Palace Tramways Bill*, [1910] 2 Ch. 1; 74 J. P. 266; *In re Peckham and East Dulwich Tramways Co.*, [1911] W. N. 15; *In re Southport and Lytham Tramroad Act*, 1900; *Ex parte Hesketh*, [1911] 1 Ch. 120; *In re West Yorkshire Tramways Bill*, [1913] 1 Ch. 170.

circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Board of Trade, the said Board, if they think fit, may by Order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such Order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such Order has been made, the road authority of such district may at any time after the expiration of two months from the date of such Order under the authority of a certificate to that effect by the Board of Trade, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorised officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

Insolvency of Promoters (*t*).

Proceedings in case of insolvency of promoters.

42. If at any time after the opening of any tramway in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the Board

(*t*) It was held that an unregistered tramway company, incorporated by a special Act, was not within the exception of "railway companies incorporated by Act of Parliament" in s. 199 of the Companies Act, 1862, and could, therefore, be wound up under that section (see now s. 267 of the Companies (Consolidation) Act, 1908) (*Re Brentford and Isleworth Tramways Co.* (1884), 26 Ch. D. 527). And see *Portsmouth, etc. Tramways Co., In re,* [1892] 2 Ch. 362. A company being in liquidation the Board of Trade, under this section, directed an inquiry to ascertain the solvency of the promoters :—*Held,* upon application by the official liquidator for an injunction to restrain the inquiry, that it was not a proceeding against the company, and could not be restrained under s. 87 of the Companies Act, 1862 (*Re Pontypridd and Rhondda Valley Tramways Co.* (1889), 58 L. J. Ch. 536; 37 W. R. 570).

Where a petition is presented for winding up a company, the court has power to restrain proceedings before magistrates for penalties against the company (*Re Briton Medical, etc. Association* (1886), 32 Ch. D. 503).

It was held, that although the company had not been ordered to be wound up, the court would appoint a receiver and manager in an action brought by a holder of overdue debentures of the company to realise his security (*Bartlett* v. *West Metropolitan Tramways Co.* (No. 1), [1893] 3 Ch. 437). And it was further held on a subsequent application by the receiver, that the court had power under this section and s. 44 to make an order for sale of the company's property as a going concern (*Bartlett* v. *West Metropolitan Tramways Co.* (No. 2), [1894] 2 Ch. 286). But this latter decision was overruled in *Marshall* v. *South Staffordshire Tramways Co.*, [1895] 2 Ch. 36, where it was held that the holders of debentures issued by a tramway company governed by this Act (whether incorporated under the Companies Act, 1862, or under a special Act, by which debentures the undertaking of the company and all its property, present and future, including uncalled capital, are charged) are in the event of default by the company entitled only to the appointment of a receiver of the undertaking of the company and the net earnings thereof; and are not entitled to an order for the sale of the undertaking or to the appointment of a mana er.

of Trade, the Board of Trade may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade may, by Order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the Order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

Purchase of Tramways (*u*).

Future purchase of undertaking by local authority.

43. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years or within three months after any Order made by the Board of Trade under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing (*x*) require such promoters to sell, and thereupon such promoters shall sell (*y*) to them their undertaking (*z*), or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) (*a*) of the tramway, and all lands, buildings, works, materials, and plant

(*u*) It is now the practice of Parliament and of the Board of Trade to vary the provisions of s. 43 as to compulsory purchase by extending the time at which purchase can take place and by providing for more reasonable terms of payment. The variations are numerous and depend entirely on the conditions which the company is willing to concede and the local authority to accept.

It is also usual in special Acts incorporating tramway companies to insert clauses to protect lenders of money to the company in the event of a compulsory sale to the local authority under s. 43 and to give them notice of the rights of the local authority. A common form of such a clause is given in the Encyclopædia of Forms and Precedents, Vol. XIV., at p. 551.

(*x*) For form of notice, see the Encyclopædia of Forms and Precedents, Vol. XIV., p. 661.

(*y*) See note (*h*), p. 1525, *post*.

(*z*) This word is limited by reference to the tramway previously mentioned, viz., the particular tramway which the promoters are empowered to construct by any special Act or Provisional Order. Therefore, where a tramway company has constructed a number of lines under special Acts passed in different years, the local authority may (subject to the leave of the Board of Trade being obtained) purchase so much of any one line as is within its district at the expiration of twenty-one years from the time when the promoters were empowered to construct the line, together with the undertaking so far as it relates to that particular line, without purchasing the other lines constructed under different special Acts (*North Metropolitan Tramways Co.* v. *London C. C.* (1896), 60 J. P. 23; 12 T. L. R. 101; in C. A. affirming 72 L. T. 586; 43 W. R. 552).

The local authority is not entitled to take possession until the amount of the purchase money has been ascertained and paid (*Manchester Tramways Co.* v. *Manchester Corporation* (1902), 67 J. P. 17; 87 L. T. 504).

(*a*) The value of the tramway upon a compulsory sale to the local authority must be measured by what it would cost to construct it at the date of such sale, subject to a proper deduction in respect of depreciation (*Edinburgh Street Tramways Co.* v. *Lord Provost of the City of Edinburgh* and *London C. C.* v. *London Street Tramways Co.*, [1894] A. C. 456, 489; *London Street Tramways Co.* v. *London C. C.*, [1898] A. C. 375; 62 J. P. 675). See also *Re Southampton Tramways Co. and Southampton Corporation* (1899), 63 J. P. 788; 16 T. L. R. 38; in C. A. affirming 80 L. T. 236. Notwithstanding the practice of Parliament in granting statutory powers to lay tramways in narrow streets, to impose

of the promoters suitable to and used by them for the purposes of their undertaking within such district (*b*), such value to be in case of difference determined by an engineer or other fit person nominated as referee (*c*) by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any Order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such Order in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a Provisional Order under this Act, and in reference to the same they shall be deemed to be the promoters (*d*).

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given, nor unless two-thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution . . . . (*e*).

The local authority in any district may pay the purchase-money and all

upon the undertakers the obligation to contribute towards the cost of widening such streets, it was held that in assessing the value of the tramway and its appurtenances belonging to a company incorporated before such practice of Parliament came into existence, the amount which the tramway company would, if constructing its tramway at the date of the notice to purchase, have been required to contribute towards the costs of widening streets ought not to be taken into account (*Re London, Deptford and Greenwich Tramways Co. and London C. C.*, [1905] 1 K. B. 316; 69 J. P. 98). And as to a local Act excluding the application of s. 43 of this Act, see *Wallasey Tramways Co.* v. *Wallasey U. D. C.*, Times, November 17th, 1899; affirmed in C. A., 23 M. C. C. 56; and affirmed again in H. L., 17 T. L. R. 152.

(*b*) The local authority purchasing a tramway within their district must pay for all lands, buildings, etc. which are suitable to and used for the purposes of the undertaking within the district, even though such lands, buildings, etc. be situate outside the district (*Manchester Carriage and Tramways Co.* v. *Swinton and Pendlebury U. D. C.*, [1906] A. C. 277; 70 J. P. 81); so also they must pay for a depôt within the district if suitable to and used for the purpose of the undertaking within the district, although in previous proceedings it has been held suitable to and used for the purpose of the undertaking outside the district (*Manchester Carriage and Tramways Co.* v. *Ashton-under-Lyne Corporation* (1903), 67 J. P. 576). See also *Manchester Carriage and Tramways Co.* v. *Manchester Corporation* (1902), 67 J. P. 14; 18 T. L. R. 779; varied by consent in C. A., 19 T. L. R. 439. The fact that the authorised tramway penetrates into a car factory does not render the council liable to purchase either the factory or the land within the factory upon which the tramway is laid, if in fact the factory is not suitable to and used by the company for the purposes of the undertaking; but *quære* whether they are bound to purchase the permanent way of the tramway within the factory (*North Metropolitan Tramways Co., Ltd.* v. *Leyton U. D. C.* (1908), 72 J. P. 241; 98 L. T. 792).

(*c*) An Act provided for "the purchase of the gasworks and plant at a price to be determined by arbitration." It was held that the price should be the commercial value of the undertaking as a going concern and not merely the structural value of the plant (*Hamilton Gas Co., Ltd.* v. *Hamilton Corporation*, [1910] A. C. 300; 74 J. P. 185). And see *Perth Gas Co., Ltd.* v. *Perth Corporation*, [1911] A. C. 506.

(*d*) On a purchase under this section the local authority also becomes liable to income tax as regards the tramway undertaking as successors of the tramway company for the purpose of r. 4 under Cases I. and II. of Sched. D. in s. 100 of the Income Tax Act, 1842 (*Re Stockham* (*Surveyor of Taxes*) *and Wallasey U. D. C.* (1907), 71 J. P. 244; 5 L. G. R. 200). The local authority are not, however, bound to keep the trams when purchased in their own hands and work them themselves. It is, therefore, no objection to their right to purchase that they may have agreed with a third party to find the purchase-money and work the trams when acquired, although the local authority may need further statutory powers to carry out such a bargain (*Bombay Tramways Co.* v. *Bombay Corporation*, Times, June 6th, 1904).

(*e*) The remainder of this paragraph applies in Scotland only, and is therefore omitted.

expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any Provisional Order obtained by them under this Act.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase-money and expenses, the Board of Trade may by Provisional Order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase-money and expenses.

Every such Provisional Order shall be confirmed in like manner as a Provisional Order under the authority of Part I. of this Act, and until such confirmation such Provisional Order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.

44. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Board of Trade, sell (*g*) their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters (*h*). Power of sale.

Provided always, that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorised.

(*g*) See *Wolverhampton Corporation* v. *British Electric Traction Co.*, Times, Friday, November 30th, 1900; 22 M. C. C. 545, which was an action for specific performance of a statutory contract to purchase a tramway. The court dismissed a counterclaim for a declaration as to running powers.

A tramway company cannot assign its statutory powers and rights except as authorised by this Act (*Baillie* v. *Binns*, Times, January 31st, 1903).

(*h*) A Provisional Order was obtained by certain promoters for the construction of tramways in a borough. The confirming Act provided that the corporation might purchase the undertaking after the lapse of fourteen years. Shortly afterwards the promoters entered into an agreement to sell the undertaking to an electric traction company and by a later agreement it was sold to the plaintiff company. The confirming Act required the consent of the Board of Trade to such agreements, but in fact no such consents were given. The construction of the tramway was commenced but never completed. After the lapse of fourteen years, as specified in the confirming Act, the corporation gave notice to the promoters and the plaintiff company or "other the promoters" requiring them to sell the undertaking, knowing, however, that the sale to the plaintiff company had not been approved by the Board of Trade. The value of the undertaking having been assessed by an arbitrator, the plaintiff company "and all others the promoters" brought an action to recover the sum fixed by him. It was held that the original promoters were the owners of the undertaking, and that as the corporation had exercised their option to purchase with notice that the transfer to the plaintiff company had not been approved by the Board of Trade, they could not now be heard to say that the promoters were not the legal owners; and further, the corporation were not affected by any equity there might be to compel the promoters to sell to the company (*Hartlepool Electric Tramways Co., Ltd.* v. *Hartlepool Corporation* (1911), 75 J. P. 507, 537; 9 L. G. R. 1098).

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase-money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

Tolls.

Tolls, etc.

45. The promoters or lessees of a tramway authorised by special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways (*i*).

Byelaws (*k*).

Byelaws by local authority.

46. Subject to the provisions of the special Act authorising any tramway and this Act,

The local authority of any district in which the same is laid down may, from time to time, make regulations as to the following matters:

The rate of speed to be observed in travelling upon the tramway:

The distances at which carriages using the tramway shall be allowed to follow one after the other (*l*):

The stopping of carriages using the tramway (*m*):

(*i*) A municipal corporation owned a tramway constructed under statutory powers. In accordance with a statutory requirement they exhibited in a conspicuous place in their cars a list of fares and appended a special notice stating, as the fact was, that the fares charged were less than the maximum authorised charges, and that in consideration thereof a passenger was only carried on the terms that the maximum amount recoverable from the corporation for injury suffered by a passenger and for which the corporation were legally liable was £25. It was held (by COZENS-HARDY, M.R., upon the construction of the statutes regulating the tramway; by FARWELL, L.J., upon the ground that the corporation were common carriers of passengers at common law in the sense that they were bound to carry according to their profession, and by KENNEDY, L.J., upon both these grounds) that, so long as the tramway was open for public traffic, the corporation were bound to carry any passenger not being an objectionable person who offered himself and was willing to pay the published fare, provided they had accommodation for him, and were not entitled to impose a condition limiting their liability for negligence without giving the passenger the option of travelling at a higher fare without any such condition. *Semble, per* COZENS-HARDY, M.R., and FARWELL, L.J. If the corporation published alternative lists of fares, one containing the maximum rates and another reduced rates, and gave an option to the passenger to pay either rate but with such a condition attached to the reduced rate, a passenger electing to pay the latter would be bound by the condition (*Clarke* v. *West Ham Corporation*, [1909] 2 K. B. 858; 73 J. P. 461). See also *Baker* v. *Ellison*, [1914] 2 K. B. 762.

(*k*) The court will refuse an application for a *mandamus* to make byelaws where the applicant has no greater interest than an ordinary member of the public. So held by CHANNELL and JELF, JJ., in *National Carriage, etc. Union* v. *Manchester Corporation*, Times, July 9th, 1902. But where petitioners appear in opposition to a Bill before Parliament, and with the object of protecting their own interests procure the insertion in the Bill of a clause imposing a particular duty upon the promoters or other persons, they will have a sufficient interest in the performance of that duty to support an application by them for a *mandamus* to enforce it, notwithstanding that they are not named in the clause and that the duty is one imposed for the benefit of the public at large. So held by Lord ALVERSTONE, C.J., and PICKFORD, J. (AVORY, J., *dubitante*), in *R.* v. *Manchester Corporation*, [1911] 1 K. B. 560; 75 J. P. 73.

(*l*) See *R.* v. *Manchester Corporation*, *supra*.

(*m*) A byelaw required that a steam tramway should be stopped in cases of impending danger:—*Held*, that there was evidence of impending danger to go to the jury in a case where a steam tram was coming down a steep incline towards a pony chaise, the pony being restive, and the driver holding up her whip as a signal to stop the car (*Downing* v. *Birmingham and Midland Trams* (1888), 5 T. L. R. 40). A local Tramway Act empowered the Board of Trade to make byelaws, providing that engines should be brought to a stand

The traffic on the road in which the tramway is laid (*n*).

The promoters of any tramway and their lessees may from time to time make regulations,— Promoters may make certain regulations.

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them :

For regulating the travelling in or upon any carriage belonging to them (*o*).

And for better enforcing the observance of all or any of such regulations, it

at cross streets, and a penalty was imposed on any person offending :—*Held*, that the company might be convicted of an offence against the byelaw (*St. Helens Tramway Co.* v. *Wood* (No. 2), (1892) 56 J. P. 71).

(*n*) The Board of Trade under a power given to them by a special Act, made a byelaw that " no steam shall be emitted from the engines so as to constitute any reasonable ground of complaint to passengers or to the public." H., a driver, was resting his engine, which was not in good repair, and he could not help emitting steam. One person complained :—*Held*, that H. was rightly convicted (*Hartley* v. *Wilkinson* (1885), 49 J. P. 726). Under a similar byelaw forbidding the emission of " smoke or steam," a conviction for emitting " smoke *and* steam " was upheld (*Davis* v. *Loach* (1886), 50 J. P. 212). Where a byelaw provided that no smoke or steam should be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public, and the penalty was the same whichever class of persons had ground of complaint, and a conviction stated that the defendant permitted smoke to escape contrary to the byelaw, without stating in terms any reasonable grounds of complaint to the passengers or the public, or either of them, it was held that the statement was insufficient, and the conviction must be quashed (*Cotterill* v. *Lempriere* (1890), 24 Q. B. D. 634 ; 54 J. P. 583). A tramway company were authorised to use steam engines on their line, and the Board of Trade were authorised to make regulations, and also to make byelaws for regulating the use of bells, whistles, and other warning apparatus fixed to the engine. The Board of Trade made a regulation that every engine should carry a bright lamp during certain hours. One day, a servant allowed the lamp to remain unlighted for some part of the journey :—*Held*, that the regulation was valid as a regulation and need not be included in the byelaws, and that the company were liable for the neglect of the servant in not keeping the lamp alight (*St. Helens Tramway Co.* v. *Wood* (No. 1) (1890), 60 L. J. M. C. 141 ; 56 J. P. 70). This case was followed in *Heiton & Co.* v. *M'Sweeney*, [1905] 2 I. R. 47, in which it was held that a byelaw requiring the owner of every vehicle to cause a light to be attached thereto when in use between certain hours in public streets is not unreasonable or void as making a master liable for the *quasi*-criminal act of a servant. Byelaws made under the Metropolitan Public Carriages Act, 1869, requiring vehicles on highways to carry lights between sunset and sunrise are applicable to tramcars (*Adamson* v. *Miller* (1900), 16 T. L. R. 185 ; 44 Sol. J. 278). And see note (*a*), p. 780, *ante*.

(*o*) A byelaw requiring payment of a fare when demanded, thou h before completion of journey, is valid (*Egginton* v. *Pearl* (1876), 40 J. P. 56 ; 33 L. T. 428, and though it does not make an intent to defraud or to avoid payment an ingredient of the offence (*Tuffley* v. *Tate* (1907), 71 J. P. 21 ; 5 L. G. R. 448). As to amount of fares, see *Edinburgh Street Tramways Co.* v. *Torbain* (1877), 3 App. Cas. 58. A passenger who had paid for and obtained a ticket which entitled him to travel to a certain destination, having alighted at a stopping place short of that destination, and walked some distance and then got on another car travelling to his original destination, but who refused to pay the legal fare, claiming to go on under his original ticket, was held liable to be convicted under a byelaw requiring payment of the legal fare when demanded (*Bastable* v. *Metcalfe*, [1906] 2 K. B. 288 ; 70 J. P. 343). A byelaw that a passenger shall deliver up his ticket when required, or pay the fare for the distance travelled over, is a reasonable byelaw. A passenger travelling under such circumstances, who shows his ticket, but refuses to give it up on the ground that his journey has not terminated, is liable to the penalty prescribed by the byelaw (*Heap* v. *Day* (1886), 51 J. P. 213 ; 34 W. R. 627). So also is a passenger who has lost his ticket and refuses to pay the fare again (*Hanks* v. *Bridgman*, [1896] 1 Q. B. 253 ; 60 J. P. 312), or a passenger who refuses to show his ticket (*Lowe* v. *Volp*, [1896] 1 Q. B. 256 ; 60 J. P. 232 ; *Hunt* v. *Green* (1907), 71 J. P. 18 ; 96 L. T. 23). But a passenger who paid his fare but declined to accept a ticket because it bore an indorsement purporting to limit the liability of the local authority in cases of accident or injury to passengers, and allowed it to fall on the floor of the car, and when the ticket inspector asked him for it pointed it out, but refused to touch or pick it up or to pay his fare a second time was held not liable under a similar byelaw (*Wilson* v. *Fearnley* (1905), 69 J. P. 165 ; 92 L. T. 647). And see *M'Intyre* v. *M'Pherson*, [1913] S. C. (S.) 21. The secretary of a tram company was summoned for allowing an excessive number of passengers in a car. At the hearing, it was objected that the secretary was not the proper defendant, whereupon the justices substituted the name of the company, and convicted them :—*Held*, that the conviction was bad (*Oxford Tramway Co.* v. *Sankey* (1890), 54 J. P. 52 ; 6 T. L. R. 151). Where

shall be lawful for such local authority and promoters respectively to make byelaws for all or any of the aforesaid purposes, and from time to time repeal or alter such byelaws, and make new byelaws, provided that such byelaws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect (*p*).

Notice of the making of any byelaw under the provisions of this Act shall be published by the local authority or the promoters making the same, by advertisement, according to the regulations contained in Part II. of the Sched. C. to this Act annexed; and unless such notice is published in manner aforesaid such byelaw shall be disallowed by the Board of Trade.

No such byelaw shall have any force or effect which shall be disallowed by the Board of Trade within two calendar months after a true copy of such byelaw shall have been laid before the Board; and a true copy of every such proposed byelaw shall, not less than two calendar months before such byelaw shall come into operation, be sent to the Board of Trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters.

Penalties may be imposed in byelaws.

47. Any such byelaw may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues (*q*); but all byelaws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

Power to local authority to license drivers, conductors, etc.

48. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licences with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages (*r*), and the drivers and other persons having the charge thereof,

a byelaw forbade the company to allow more persons to be carried in a carriage than a specified number, it was held that a passenger who was incommoded by an excessive number of passengers was entitled to prosecute the conductor (*Badcock* v. *Sankey* (1890), 54 J. P. 564; 6 T. L. R. 170). As to the right of a corporation as tramway authority to rely by way of defence to an action for negligence, on the byelaws made by them for the regulation of their tramways, see *Hughes* v. *Leeds Corporation*, Times, August 4th, (1902), 24 M. C. C. 387; see also *Pickering* v. *Belfast Corporation*, [1911] 2 I. R. 224. A local Act provided that no conductor should carry in or on the carriage a greater number of passengers than that specified in the licence. A licence was granted in respect of a carriage to carry 32, 16 inside and 16 outside:—*Held*, that a conductor was guilty of an offence by carrying 19 seated and 8 standing inside, and 5 on the footboard, making altogether 32 (*Stokell* v. *Baldwin* (1892), 8 T. L. R. 346). As to the liability of the promoters for an accident occurring through overcrowding allowed by their servant contrary to their express orders, see *Byrne* v. *Londonderry Tramway Co.*, [1902] 2 I. R. 457. A byelaw of a corporation provided that passengers "should depart from or get off a car by the hindermost or conductor's platform and not otherwise." It was held that the expression "hindermost or conductor's platform" must in each case be construed in relation to the particular passenger and the journey on which he was engaged, and meant the platform which was or would be the hindermost during the journey which the passenger in question had taken or was about to take (*Monkman* v. *Stickney*, [1913] 2 K. B. 377; 77 J. P. 368). And see *Baker* v. *Ellison*, *ante*, p. 1526.

(*p*) A byelaw that no person shall swear or use obscene or offensive language whilst in or upon any carriage was held not *ultra vires*, although s. 28 of the Town Police Clauses Act, 1847, was in force in the same city and also a local Act imposing a penalty on every person who should use any profane, indecent or obscene language to the annoyance of the inhabitants or passengers (*Gentel* v. *Rapps*, [1902] 1 K. B. 160; 66 J. P. 117).

(*q*) Penalties cannot be imposed in advance (*R.* v. *Struvé* (1895), 59 J. P. 484).

(*r*) See s. 171 of the P. H. A., 1875, *ante*, p. 392; ss. 37 *et seq.* and 68 of the Town Police Clauses Act, 1847, *ante*, p. 1472, and 52 & 53 Vict. c. 14, *post*, p. 1840. As to the confirmation of these regulations, see 47 & 48 Vict. c. 12, *ante*, p. 720, which abrogates the effect of the case of *Wallasey Tramway Co.* v. *Wallasey L. B.* (1883), 47 J. P. 821.

The local authority of a borough may make a byelaw under this section for regulating

and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connection therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority.

Offences.

49. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for obstruction of promoters in laying out tramway.

50. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Penalties for wilful injury or obstruction to tramways, etc.

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon (*s*);

Or knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding five pounds.

51. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding forty shillings (*t*).

Penalty on passengers practising frauds on the promoters.

52. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to

Transient offenders.

the number of passengers to be carried in and upon tramcars, and the extent of accommodation to be afforded to them. The assent of the lessees of the line under s. 46 is not necessary to the validity of such byelaw (*Smith* v. *Butler* (1886), 16 Q. B. D. 349; 50 J. P. 260).

(*s*) This provision does not affect the right of the public to the use of the street so long as there is no wilful obstruction. The mere presence of a cart upon a tramway line, whereby a tramcar has to proceed for some distance at a walking pace, is not necessarily a wilful obstruction (*Hall* v. *Linton* (1879), 7 Ct. of Sess. Cas. (4th ser.), (J. C.) 2). As to the duty of the conductor and the responsibility of the company in case of a drunken man trying to force his way on to a tramcar in motion and thereby endangering his own life, see *Delaney* v. *Dublin Tramways Co.* (1892), 30 L. R. Ir. 725. See also as to what amounts to wilful obstruction of a tramcar, *Hartley* v. *Chadwick* (1904), 68 J. P. 512.

(*t*) Proceedings under this section are of a criminal character, and, therefore, the company are liable to an action for malicious prosecution at the suit of a person against whom a summons under this section has been dismissed (*Rayson* v. *South London Tramways Co.*, [1893] 2 Q. B. 304; 58 J. P. 20). In order to obtain a conviction under this section it is necessary to show that the person acted with a fraudulent intention (*Nimmo* v. *Lanarkshire Tramways Co.*, [1912] S. C. (J.) 23).

commit any such offence as in the next preceding section is mentioned, and whose name and residence is unknown to such officer or servant until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law (*u*).

Penalty for bringing dangerous goods on the tramway.

53. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature ; and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence ; and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact (*x*).

Penalty for persons using tramways with carriages with flange wheels, etc.

54. If any person (except under a lease from or by agreement with the promoters, or under licence from the Board of Trade, as by this Act provided) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds (*y*).

Miscellaneous.

Promoters or lessees to be responsible for all damages.

55. The promoters or lessees, as the case may be, shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries (*z*).

(*u*) See *Howitt* v. *Nottingham Tramways Co., ante*, p. 1515. The plaintiff was a passenger in one of the defendants' tramcars, and tendered to the conductor in payment of a fare a half-sovereign, which the conductor supposed to be counterfeit, and he therefore gave the plaintiff in charge to the police :—*Held*, that as this section gave the conductor authority to detain a person attempting to defraud, the company were liable for his acts in an action for false imprisonment (*Furlong* v. *South London Tramways Co.* (1888), 1 C. & E. 316 ; 48 J. P. 329). But where the conductor had printed instructions not to give passengers into custody under this section without the authority of an inspector or timekeeper except in cases of assault, but a conductor without such authority gave a passenger in charge for passing bad money it was held that the company were not liable (*Charleston* v. *London Tramways Co.* (1888), 36 W. R. 367 ; 4 T. L. R. 157 ; affirmed in C. A., 4 T. L. R. 629 ; 32 Sol. J. 557). As to the liability of the company for an assault by a conductor on a passenger delaying to pay his fare, see *Smith* v. *North Metropolitan Tramways Co.* (1891), 7 T. L. R. 459 ; 55 J. P. 630 ; and for an assault by a conductor acting under a misapprehension, *Radley* v. *L. C. C.* (1913), 109 L. T. 162 ; 29 T. L. R. 680.

(*x*) It seems that a person cannot be convicted of sending dangerous goods under this section unless guilty knowledge is proved (*Hearne* v. *Garton* (1859), 2 El. & El. 266 ; 28 L. J. M. C. 216). The undertakers are not liable in damages for injuries occasioned to passengers by dangerous goods brought into the car by another passenger, unless the plaintiff can prove that they were guilty of negligence in allowing such goods to be brought there (*East Indian Rail. Co.* v. *Kalidas Mukerjee*, [1901] A. C. 396).

(*y*) A contrivance whereby a small disc might be let down into the groove of the rail, and thus operate as a flange, was held to be within this section (*Cottam* v. *Guest* (1885), 6 Q. B. D. 70 ; 45 J. P. 95). See also *Liverpool Tramways* v. *Liverpool Omnibus Co.* (1870), W. N. 126 ; *Manchester Corporation* v. *Andrews* (1889), 5 T. L. R. 470.

(*z*) This section only applies to a wrongful act or default and does not make the promoters or lessees answerable for mere accident caused without negligence by their use of tramcars (*Brocklehurst* v. *Manchester, Bury, Rochdale and Oldham Steam Tramways Co.* (1887), 17 Q. B. D. 118 ; 51 J. P. 55 ; *Breslin* v. *Dublin United Tramway Co.* (1911), 45 Ir. L. T. 220. But it is otherwise if negligence be proved. See *Sadler* v. *South Staffordshire, etc. Tramways Co., ante*, p. 1514 ; *Pickering* v. *Belfast Corporation*, [1911] 2 I. R. 224. As to injury caused by the snapping of an overhead electric wire, see *Neale* v. *East Ham*

56. All tolls, penalties, and charges under this Act, or under any byelaw made in pursuance of this Act, may be recovered and enforced as follows: in England before two justices of the peace in manner directed by the Summary Jurisdiction (England) Acts . . . (*a*). Recovery of tolls, penalties, etc. 14 & 15 Vict. c. 43, etc.

57. Notwithstanding anything in this Act contained the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway . . . (*b*). Right of user only.

* * * * *

59. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals; nor shall any such owner, lessee or occupier be liable to make Reservation of rights of owners, etc. of mines.

Corporation, Times, February 22nd, 1905. For a case where a nuisance was caused by the use of creosoted wood blocks, see *West* v. *Bristol Tramways Co.*, [1908] 2 K. B. 15; 72 J. P. 243. As to what is sufficient evidence of negligence, see *Leaver* v. *Pontypridd U. D. C.* (1912), 76 J. P. 31; 56 Sol. J. 32. For a case in which a "trolley arm" fell and caused injury to a passenger, see *Newberry* v. *Bristol Tramway and Carriage Co., Ltd.* (1913), 29 T. L. R. 177; and a stay projecting from beneath the car and causing a plaintiff to fall, *Gibb* v. *Edinburgh and District Tramway Co., Ltd.*, [1912] S. C. 580. A cab had stopped to take up a passenger in a steep and narrow street; one of its wheels rested upon a tramway rail. The driver of a tramway car proceeding down the incline saw the obstruction fifty yards away and whistled. He was going slowly, but he did not stop his car, because he expected up to the last moment that the cab would be drawn out of his way, and then, from the steepness and greasiness of the street, was unable to do so. The car caught the cab, and damaged both it and its horse. In an action for damages against the company, it was held that the driver was in fault in not stopping his car when he first saw the cab, and that the cabman was not guilty of any contributory negligence (*McDermaid* v. *Edinburgh Street Tramways Co.* (1884), 12 Ct. of Sess. Cas. (4th ser.) 15; and see *Rattee* v. *Norwich Electric Tramway Co.* (1902), 18 T. L. R. 562. The promoters are not liable for injuries arising from the acts of their servants outside the scope of their employment and in direct defiance of their orders. See *Byrne* v. *Londonderry Tramway Co.*, [1902] 2 I. R. 457. A tramway company acting under Provisional Order and using the best known system of electrical traction were held not to be liable for electrical disturbance in the wires of a telephone company under licence from the Postmaster-General (*National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; 57 J. P. 373). As to the responsibility of an electric tram company for a leakage of electricity causing disturbance in adjacent telegraphic apparatus belonging to a private company, see *Eastern and South African Telegraph Co.* v. *Capetown Tramways*, [1902] A. C. 381. A tramway company have no right to clear their lines after a snowstorm by scattering salt so as to render the road dangerous for other traffic (*Ogston* v. *Aberdeen Tramways Co.*, [1897] A. C. 111; 61 J. P. 436). But they may use the water system of cleaning the rails from dirt so long as they do not cause a nuisance thereby (*Middlesbrough Corporation* v. *Imperial Tramways Co.*, Times, May 11th, 1901). A tramway was held to be a railroad, and therefore an engineering work within the meaning of the now repealed Workmen's Compensation Act, 1897 (*Fletcher* v. *London United Tramways Co.*, [1902] 2 K. B. 269; 66 J. P. 596). Where a local authority acquire and work a tramway under statutory powers, negligence on the part of their servants in driving the tramcars is a neglect or default in the execution of a public duty or authority within the meaning of s. 1 (a) of the Public Authorities Protection Act, 1893, and consequently an action against the local authority in respect of such negligence must be commenced within six months after the occurrence of the negligence (*Parker* v. *London C. C.*, [1904] 2 K. B. 501; 68 J. P. 239). And see *Clarke* v. *West Ham Corporation*, the facts of which are set out at p. 1526, *ante*; *Martin* v. *Dublin United Tramways Co., Ltd.*, [1909] 2 I. R. 13; *Cass* v. *Edinburgh and District Tramways Co.*, *post*, p. 1533.

(*a*) The remainder of this section relates only to Scotland. As to restraining proceedings against a company in liquidation, see *Re Briton Medical, etc. Association*, *ante*, p. 1522.

The principle of *Gardner* v. *L. C. & D. Rail. Co.* (1867), L. R. 2 Ch. 201, does not prevent the levying by distress of penalties imposed on a tramway company for non-repair of their rails (*Pegge* v. *Neath District Tramways Co.*, [1895] 2 Ch. 508). An appeal from this decision was compromised, [1896] 1 Ch. 684.

(*b*) The remainder of this section (as to turnpike roads) and the whole of the following section (as to arrangements between turnpike trustees and the promoters) were repealed as obsolete by the S. L. R. A., 1893 (No. 2).

good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals.

Reserving powers of street authorities to widen, etc. roads.

60. Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation (*c*).

Power for local or police authorities to regulate traffic in roads.

61. Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

Reservation of rights of public to use roads.

62. Nothing in this Act or in any byelaw made under this Act shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway (*d*).

Regulating inquiries before referee appointed by the Board of Trade.

63. Every inquiry which by this Act the Board of Trade are empowered to make or direct shall be made in accordance with the following provisions :

1. The inquiry shall be held in public before an officer to be appointed in that behalf by the Board, hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him :
2. Ten days notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced :
3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit :
4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds : Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode :
5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry :
6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury :

(*c*) See *Bristol Trams and Carriage Co.* v. *Bristol Corporation*, *ante*, p. 1518.

(*d*) This section reserves to the public the right of using every part of the road including the rail so long as they do not use wheels with flanges, or wheels suitable only to the rails (*Manchester Corporation* v. *Andrews* (1889), 5 T. L. R. 470).

7. The referee shall make his report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

64. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters (*e*) : Rules for carrying Act into effect.

1. The proceedings to be had before the Board under this Act :
2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits :
3. The plans and sections of any works to be deposited by promoters under this Act :
4. As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

SCHEDULE A. (*f*)

PART I.

[Sect. 3.]

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
	ENGLAND AND WALES.	
The city of London and the liberties thereof.	The mayor, aldermen, and commons of the city of London.	The consolidated sewers rate.
The metropolis (1.).	The Metropolitan Board of Works.	The metropolitan consolidated rate.
Boroughs (2.).	The mayor, aldermen, and burgesses acting by the council.	The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act, with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (*g*).	The local board.	General district rate.

(*e*) Rules have been made under this section, those now in force being dated January, 1892 (Stat. R. & O. *Rev.* 1904. *XIII. Tramway, E. and S.*, p. 1). As to the construction of such rules, see *In re Bradford Tramways Co.* ; *In re Lowestoft, Yarmouth and Southwold Tramways Co.* ; *In re Tynemouth Borough Tramways Co.* ; *In re Colchester Tramways Co.*, *ante*, p. 1507 ; *Cass* v. *Edinburgh and District Tramways Co., Ltd.*, [1909] S. C. 1068.

(*f*) So much of this Schedule as relates to Scotland only is omitted.

(*g*) Now the P. H. A., 1875. See s. 313 of that Act, *ante*, p. 649.

SCHEDULE A. PART I.—*continued.*

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
	ENGLAND AND WALES.	
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	The poor rate.
. . .	. . .	. . .

Notes.

(1) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.

5 & 6 Will. 4, c. 76. (2) "Borough" shall mean any place for the time being subject to the Municipal Corporations Act, 1835 (*h*).

PART II.

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the metropolis (1.) mentioned in Schedule (A.) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.
Districts within the metropolis (1.) formed by the union of the parishes mentioned in Schedule (B.) to the Metropolis Management Act, 1855.	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855.

Note (1).—The term "metropolis" has in this Part the same meaning as in Part I. of this Schedule.

[Sect. 4.]

PART III.

Approval of Application by Local Authority for a Provisional Order.

The approval of any intended application for a Provisional Order by a local authority shall be in the manner following; that is to say,

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution . . . Where any such resolution relating to the metropolis as the same is defined in Part I. of this Schedule . . . has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved (*i*).

(*h*) Now the Municipal Corporations Act, 1882. See s. 242 of that Act.
(*i*) Words relating to Scotland only are here omitted.

SCHEDULE B.

Provisional Orders.

Part I. [Sect. 6.]

Advertisement in October or November of intended Application.

(1) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.
4. The times and places at which the deposit under Part II. of this Schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as hereinafter provided.

(2) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district is situate in England . . . (*j*).

Part II. [Sect. 6.]

Deposit on or before 30th November.

(1) The promoters are to deposit—

1. A copy of the advertisement published by them.
2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made . . . (*j*).

(3) The documents aforesaid are also to be deposited at the office of the Board of Trade.

Part III. [Sect. 6.]

Deposit on or before 23rd December.

(1) The promoters are to deposit at the office of the Board of Trade—

1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
2. A printed draft of the Provisional Order as proposed by the promoters, with any Schedule referred to therein.
3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.

(*j*) Words relating to Scotland only are here omitted.

(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:

[*Short Title of Undertaking.*]

To the Board of Trade,

The memorial of the promoters of [*short title of undertaking*]:

Showeth as follows:

1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,
C. D.,
Promoters.

[Sect. 13.]

PART IV.

Deposit and Advertisement of Provisional Order when made.

(1) The promoters are to deposit printed copies of the Provisional Order, when settled and made, for public inspection in the offices of clerks of the peace (*k*) . . . where the documents required to be deposited by them under Part II. of this Schedule were deposited.

(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each.

(3) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or in case the same shall no longer be published, in some other newspaper published in the district.

SCHEDULE C.

[Sect. 19.]

PART I.

Notice and Deposit of Lease by Local Authority.

One month before any lease is submitted to the Board of Trade, notice of the intention to make such lease shall be given by advertisement.

(1) Every advertisement is to contain—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.
4. The place where the same is deposited for public inspection.

(2) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(*k*) Words relating to Scotland only are here omitted.

(3) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district to which it relates is situate in England . . . (l).

Deposit.

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

Part II. [Sect. 46.

Notice of Byelaws.

Within one month after the making of any byelaw notice of the making of the same, and a copy of such byelaw, shall be published by advertisement in manner following:

(1) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such byelaws; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district to which it relates is situate in England . . . (l).

THE FAIRS ACT, 1871.

(34 & 35 Vict. c. 12) (*m*).

An Act to further amend the law relating to Fairs in England and Wales.
[25th May, 1871.]

1. This Act may be cited as "The Fairs Act, 1871." Short title.

2. In this Act the term "owner" means any person or persons, or body of commissioners, or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands or tenements, or under any charter, letters patent, or Act of Parliament, or otherwise howsoever. Interpretation.

3. In case it shall appear to the Secretary of State for the Home Department, upon representation duly made to him by the magistrates of any petty sessional district (*n*), within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be abolished, it shall be lawful for the said Secretary of State for the Home Department, with the previous consent in writing of the owner for the time being of such fair, or of the tolls or dues payable in respect thereof, to order that such fair shall be abolished accordingly: Provided always, that notice of such representation, and of the time when it shall please the Secretary of State for the Home Department to take the same into consideration, shall be published once in the London Gazette, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered. Order for abolition of fair.

(*l*) Words relating to Scotland only are here omitted.

(*m*) See the L. G. A., 1894, ss. 27 (1) (e) and 32, *ante*, pp. 1010, 1013. See also 36 & 37 Vict. c. 37, *post*, p. 1573. The preamble and clause of enactment to this Act are repealed by the S. L. R. A., 1893 (No. 2).

(*n*) This representation will now come from the district council.

Publication of order.

4. When and so soon as any such order as aforesaid shall have been made by the Secretary of State for the Home Department, notice of the same shall be published in the London Gazette, and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall be abolished.

THE GASWORKS CLAUSES ACT, 1871.

(34 & 35 VICT. c. 41.) (*o*)

An Act to amend the Gasworks Clauses Act, 1847. [13th July 1871.]

Construction. 10 & 11 Vict. c. 15.

1. The Gasworks Clauses Act, 1847, and this Act, shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act.

Short title.

2. This Act may be cited as "The Gasworks Clauses Act, 1871."

Application of Act. 33 & 34 Vict. c. 70.

3. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any Provisional Order made under the authority of the Gas and Water Works Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any such special Act or Provisional Order; and every such special Act and Provisional Order is in this Act included in the term "the special Act" (*p*).

Interpretation. 10 & 11 Vict. c. 15. 33 & 34 Vict. c. 70.

4. Terms used in this Act have the same meanings respectively as the same terms have when used in the Gasworks Clauses Act, 1847, and in the Gas and Water Works Facilities Act, 1870.

The term "prescribed" in this Act shall mean prescribed by the special Act:

The term "premises" in this Act shall include house and building:

And the expression "superior courts" or "court of competent jurisdiction" in this Act or in any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt and not a debt or demand created by statute.

GENERAL PROVISIONS.

Prohibition against erecting gasworks elsewhere than on lands specified in special Acts.

5. The undertakers shall not manufacture gas, or any residual products, except upon lands described in the special Act, and they shall not store gas, except upon those lands, without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored.

Sale of superfluous lands.

6. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the under-

(*o*) See 10 & 11 Vict. c. 15, note (*m*), *ante*, p. 1393. The preamble to this Act is repealed by the S. L. R. A., 1893 (No. 2).

(*p*) The effect of ss. 1, 3 is that this Act is incorporated with special Acts passed before 1871 which incorporate the Act of 1847 (*Commercial Gas Co.* v. *Scott* (1876), L. R. 10 Q. B. 400; 40 J. P. 214; *Dudley Gaslight Co.* v. *Warmington* (1881), 50 L. J. M. C. 69; 45 J. P. 649; *South Metropolitan Gas Co.* v. *Noakes* (1889), 61 L. T. 566; 5 T. L. R. 448). See also *Leamington Priors Gas Co.* v. *Davis*, cited in the note to s. 35, *post*, p. 1545.

taking, and the provisions of the Lands Clauses Consolidation Act, 1845, ss. 128 to 132 (both sections inclusive), shall apply to any such sale (*q*); and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking. 8 & 9 Vict. c. 18.

7. If any money be payable to a shareholder in a gas undertaking, being a minor, idiot, or lunatic, the receipt of his or her respective guardian or committee shall be a sufficient discharge to the undertakers for the same. Receipts of guardians, etc. to be sufficient discharge.

8. The mortgagees of the undertakers may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, in England . . . by the appointment of a receiver . . . ; and in order to authorise the appointment of a receiver . . . in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than in the whole one thousand pounds, or such sum as shall be specified in the special Act (*r*). For appointment of receiver.

9. Nothing in this or the special Act shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them (*s*). Undertakers not exempted from indictment.

10. Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act, and of the Lands Clauses Consolidation Acts Amendment Act, 1860, grant to the undertakers any easement, right, or privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands; and the provisions of the last-mentioned Acts with respect to lands and rent-charges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easement, rights, or privileges as aforesaid (*t*). Power to take easements, etc. by agreement. 23 & 24 Vict. c. 106.

SUPPLY OF GAS TO OWNERS AND OCCUPIERS OF PREMISES.

11. The undertakers shall (*u*), upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any main of the undertakers, or such other distance as may be prescribed (*x*), give and continue to give a supply of gas for such premises, under such pressure in the main as may be prescribed, and they shall furnish and lay any pipe that may be necessary for such purpose, subject to the conditions following; (that is to say,) Undertakers to furnish sufficient supply of gas to owners and occupiers within the limits of the special Act.

The cost of so much of any pipe for the supply of gas to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such pipe as may be laid for a greater distance than thirty feet from any pipe of the

(*q*) See the sections, *ante*, pp. 1363, 1364.
(*r*) Words relating to Scotland and Ireland only are omitted from this section.
(*s*) See 10 & 11 Vict. c. 15, s. 29, and note thereto, *ante*, p. 1401.
(*t*) See 8 & 9 Vict. c. 18, s. 7, *ante*, p. 1323.
(*u*) The Board of Trade have power under s. 29 of 45 & 46 Vict. c. 56, *post*, p. 1323, to relieve gas undertakers from their obligation to supply gas in cases where there is a sufficient supply of electric light and the supply of gas has consequently ceased to be remunerative.
(*x*) Upon the true construction of s. 6 of the Metropolis Gas Act, 1860, a gas company is prohibited from furnishing to a customer a supply of gas for the purpose of consumption by him within a district assigned to another company, notwithstanding that the part of the customer's property through which the supply passes is within the district assigned to the company desirous of furnishing the supply (*Gas Light and Coke Co.* v. *South Metropolitan Gas Co.* (1890), 62 L. J. Ch. 123; 54 J. P. 373). And see *Att.-Gen.* v. *West Gloucestershire Water Co.*, *ante*, p. 363.

undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of gas shall—

Serve a notice upon the undertakers at their office, specifying the premises in respect of which such supply is required, and the day (not being an earlier day than a reasonable time (*y*) after the date of the service of such notice) upon which such supply is required to commence;

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of gas for a period of at least two years, of such an amount that the rent payable for the same shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any pipe to be provided by them for the purpose of such supply; and

Give to the undertakers (if required by them so to do) security (*z*) for the payment to them of all moneys which may become due to them by such owner or occupier in respect of any pipe to be furnished by the undertakers and in respect of gas to be supplied by them.

Provided always, that the undertakers may, after they have given a supply of gas for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues (*a*).

Quality of gas.

12. The quality of the gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound, and such gas shall as to its purity not exhibit any trace of sulphuretted hydrogen when tested in accordance with the rules prescribed in that behalf in Part II. of the Schedule A. to this Act annexed.

Undertakers may require consumers to use meters.

22 & 23 Vict. c. 66.

13. Every consumer of gas supplied by the undertakers shall, if required to do so by them, consume such gas by a meter duly stamped under the authority of the Sale of Gas Act, 1859, and being a legal meter within the meaning of the said Act, or by a meter supplied or approved by the undertakers: Provided always, that where the provisions of the said Act are in force no meter shall be used unless the same shall be a legal meter within the meaning of the said Act, and that elsewhere the undertakers shall not refuse to approve of any meter which when duly tested according to the rules con-

(*y*) See as to what is a reasonable time, *South Metropolitan Gas Co.* v. *Noakes* (1889), 61 L. T. 556; 5 T. L. R. 448.

(*z*) See s. 16, *post*, p. 1641.

(*a*) If the owner of premises be adjudicated a bankrupt, the official receiver is not entitled to call on the company to continue the supply of gas, and where he has paid arrears of gas rates under protest in order to avoid the cutting off of the supply, the trustee in bankruptcy cannot recover back the arrears so paid from the gas company (*Ex parte Mason, In re Smith*, [1893] 1 Q. B. 323; 57 J. P. 72). Receivers and managers on behalf of debenture holders, whether appointed under a deed or by the court, are not on entering into possession entitled to demand a supply of gas without paying the arrears of gas rent due from the company that issued the debentures (*Paterson* v. *Gas Light and Coke Co.*, [1896] 2 Ch. 476; 60 J. P. 532). And see *Husey* v. *Gas Light and Coke Co.* (1902), 18 T. L. R. 299.

tained in the said Act for regulating measures used in sales of gas is found to be correct within the meaning of the said Act.

Undertakers to supply meters.

14. The undertakers shall supply to any owner or occupier of premises within the limits of the special Act requiring the same a meter for registering gas supplied by them: Provided always, that such owner or occupier shall, if required, previous to receiving such meter, give to the undertakers security for payment to them of the price of such meter if he desires to purchase the same, or of the rent of such meter if he desires to hire the same.

Meters not to be connected or disconnected without notice

15. No consumer shall connect any meter with any pipe through which gas is supplied by the undertakers to such meter, or disconnect any meter from any such pipe, unless he shall have given to the undertakers not less than twenty-four hours notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings (*b*).

Nature and amount of security.

16. Where any owner or occupier is required by the special Act to give security to the undertakers, such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined, on the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

Consumer to keep his meter in proper order.

17. Every consumer of gas supplied by the undertakers shall at all times, at his own expense, keep all meters belonging to him whereby any gas of the undertakers is registered in proper order for correctly registering such gas, and in default of his so doing the undertakers may cease to supply gas through such meter. The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times, such taking off, removal, testing, inspecting, and replacing to be done at the expense of the undertakers if the meter be found in proper order, but otherwise at the expense of the consumer (*c*).

Power to undertakers to let meters.

18. The undertakers may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the hirer and the undertakers, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas (*d*), and such meters and fittings shall not be subject to distress, or to the landlord's remedy for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the persons in whose possession the same may be.

(*b*) As to the recovery of this penalty, see s. 44, *post*, p. 1547. The giving of notice under this section does not affect the liability of a person to be convicted of an offence against s. 18 of the Act of 1847 (10 & 11 Vict. c. 15), *ante*, p. 1393, for substituting a larger pipe to increase the supply of gas (*Morrison, Wood & Co.* v. *West Ham Gas Co.* (1889), 49 J. P. 662); 52 L. T. 817. Where a gas company cut off the supply of gas, and the owner of the meter proceeded to remove it, it was held that he was a consumer within this section, and damages were awarded for injuries caused by an explosion consequent on the disconnected pipe, which was still charged from the main, being broken in the removal of the meter (*Paterson* v. *Blackburn Corporation* (1893), 9 T. L. R. 55).

(*c*) Where gas is supplied by a penny-in-the-slot meter, and the customer is not negligent in the custody of the meter, he is not liable to pay over again for gas supplied should the pennies be abstracted from the meter by robbery (*Edmundson* v. *Longton Corporation* (1902), 19 T. L. R. 15). See also the cases collected in Michael and Will on Gas and Water, 6th ed., at p. 233.

(*d*) See s. 23, *post*, p. 1542; see also ss. 39, 41, *post*, pp. 1546, 1547.

Undertakers to keep meter let for hire in repair.

19. The undertakers shall at all times, at their own expense, keep all meters let for hire by them to any consumer in proper order for correctly registering gas, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times.

Register of gas meters to be primâ facie evidence.

20. The register of the meter shall be primâ facie evidence of the quantity of gas consumed, and in respect of which any rent is charged and sought to be recovered by the undertakers: Provided always, that if the undertakers and the consumer differ as to the quantity consumed, such difference may be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties (*dd*).

Power to enter buildings for ascertaining quantities of gas consumed.

21. Any officer appointed by the undertakers may at all reasonable times enter any building or land lighted with gas supplied by the undertakers in order to inspect the meters, fittings, and works for the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.

Power to remove meter and fittings.

22. In all cases in which a consumer of gas supplied by the undertakers ceases to require a supply of such gas, and in all cases in which the undertakers are authorised to take away and cut off the supply of gas from any premises, it shall be lawful for the undertakers, their agents, or workmen, after twenty-four hours notice in writing, under the hand of the secretary or other properly authorised officer of the undertakers, to the occupier, or if unoccupied, then to the owner or lessee, or to the agent or the owner or lessee, of any premises in which any pipes, meters, fittings, or apparatus belonging to the undertakers are laid or fixed, and through or in which the supply of gas is from any such cause discontinued, to enter such premises between the hours of nine in the morning and four in the evening, for the purpose of removing and to remove such pipes, meters, fittings, or apparatus, repairing all damage caused by such entry or removal.

Recovery of charges for gas.

23. In case any person who shall have been supplied with gas by the undertakers shall neglect or refuse to pay the amount due in respect of such supply, any justice may issue his summons to such person, requiring him to appear at a time and place named therein, and then and there to show cause why the sum so demanded should not be paid; and if on the appearance of such person, or in default of appearance after proof of the service of the summons, either personally or at the last known place of abode or of business of such person, no sufficient cause can be shown to the contrary, any justice may issue his warrant of distress for the seizure and sale of the goods and chattels of such person, for the recovery of the amount which may be proved before such justice to be due from such person, together with such costs, including the cost of cutting off the gas, if the same shall have been cut off by the undertakers, as to such justice shall seem just and reasonable (*e*).

(*dd*) See *South Metropolitan Gas Co.* v. *Bermondsey Borough Council* (1901), 17 T. L. R. 520; *In re Adolphe Crosbie, Ltd., Johnson and Hughes* v. *Adolphe Crosbie, Ltd.* (1910), 74 J. P. 25.

(*e*) It seems to be doubtful whether the sum due will now be recoverable as a civil debt under the S. J. A., 1879, ss. 6, 35, 47. See 52 J. P. 316. As to the effect of liquidation or bankruptcy on the right to distrain, see *Ex parte Hill, In re Roberts* (1877), 6 Ch. D. 63, and *Ex parte Harrison, In re Peake, post*, p. 1547.

Supply of Gas to Local Authorities.

24. The undertakers shall supply gas to any public lamps within the distance of fifty yards from any of the mains of the undertakers in such quantities as the local authority of each district or the trustees of any turnpike road or any highway board within the limits of the special Act may from time to time require to be supplied, and the price to be charged by the undertakers and to be paid to them for all gas so supplied shall be settled by agreement between the local authorities and the undertakers, and in case of difference by arbitration, regard being had to the circumstances of the case and the prices charged to private consumers in the district (*f*). Supply and price of gas to public lamps.

25. The gas supplied to the public lamps within the limits of the special Act shall be consumed by meter, at the option either of the local authority of the district or the undertakers, and in case of its being consumed by meter the meter shall be provided and fixed by the undertakers, and be paid for by the party requiring it. As to consumption of gas supplied to the public lamps.

If the gas is supplied to the public lamps in any district by average meter indication, the undertakers shall, for securing uniformity of consumption between metered and unmetered lamps, from time to time provide the public lamps in such district with proper self-acting pressure regulators and burners to the satisfaction of the local authority of such district; and the average amount of the indications of all the meters attached to the public lamps within such district under the control of the local authority shall, except as hereinafter mentioned, be deemed to be the amount consumed by each such lamp in such district.

26. In case gas is supplied to the public lamps in any district by the undertakers, they or the local authority of such district may, at their own expense, cause to be affixed to each lamp the instrument known as a street lamp governor, and the undertakers or such local authority (as the case requires) shall be entitled to have access thereto for the purpose of examining the same. Governors for street lamps.

27. Any difference which may arise between the undertakers and any local authority in relation to the supply or consumption of gas to or by such local authority shall be from time to time settled by arbitration in manner provided by the Companies Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration. Settlement of differences by arbitration. 8 & 9 Vict. c. 16.

Testing of Gas.

28. The undertakers shall cause to be provided, at the place prescribed and within the prescribed time, a testing place, with apparatus therein, for Testing place.

(*f*) See, however, s. 29 of the Electric Lighting Act, 1882, *post*, p. 1749, under which the Board of Trade have power in certain cases to relieve gas undertakers from obligations to supply gas. In a case which turned upon the construction of a special Act a company were held entitled to the full price for gas supplied to public lamps though by reason of exceptional frosts they had been unable to afford the full supply (*In re Richmond Gas Co. and the Richmond Corporation*, [1893] 1 Q. B. 56; 56 J. P. 776). A Bill promoted by a gas company to raise the price of gas to private consumers does not affect the rights, privileges or duties of the local authority, being a large consumer for public lighting in the district, so as to enable the local authority to pay the costs of opposing the Bill out of public funds under their control, either under the Borough Funds Act, 1872, or independently of it (*Att.-Gen.* v. *Swansea Corporation*, [1898] 1 Ch. 602; 62 J. P. 405). The undertakers have no right to lay a connection pipe to a public lamp through private property (*Bellamy* v. *Liverpool Corporation* (1904), 68 J. P. 540; 2 L. G. R. 1182.

the purposes following, or such of them as may be prescribed by the special Act, that is to say,—

1. For testing the illuminating power of the gas supplied:
2. For testing the presence of sulphuretted hydrogen in the gas supplied.

The said apparatus shall be in accordance with the regulations (*g*) prescribed in Part I. of the Sched. A. to this Act annexed, or according to such rules as may from time to time be substituted in lieu thereof by any special Act, and shall be so situated and arranged as to be used for the purpose of testing the illuminating power and purity of the gas supplied by the undertakers, and the undertakers shall at all times thereafter keep and maintain such testing place and apparatus in good repair and working order.

Appointment and powers of gas examiners.

29. The local authority of any district within the limits of the special Act, where the gas is not supplied by such local authority, may after the passing of the special Act from time to time appoint, or may appoint and keep appointed, a competent and impartial person to be a gas examiner to test the gas at the testing place provided in conformity with the provisions of this Act; and such gas examiner may there test the illuminating power and purity of the gas supplied by the undertakers, on any or every day between the hours of five o'clock and ten o'clock in the afternoon from the first day of October to the thirty-first day of March, both inclusive, and on any or every day between the hours of eight o'clock and eleven o'clock in the afternoon from the first day of April to the thirtieth day of September, both inclusive (*h*).

Two justices may appoint gas examiners.

30. Where no such gas examiner is appointed, or where the testing of the gas is imperfectly attended to by the local authority, two justices, on the application of consumers of the gas of the undertakers, not being less than five, by order in writing may appoint some competent and impartial person to be gas examiner, and such person may at any time within the hours aforesaid, on producing the said order, enter on the premises of the undertakers, and there test the illuminating power and purity of the gas supplied by them.

Representation of undertakers.

31. The undertakers may, if they think fit, on each occasion of the testing of the gas by the gas examiner, be represented by some officer, but such officer shall not interfere in the testing.

Mode of testing.

32. Any tests taken in pursuance of this Act shall be taken in accordance with the rules prescribed in Part II. of the Sched. A. to this Act annexed.

Report of gas examiner.

33. The gas examiner shall, on the day immediately following that on which the testing of the illuminating power or purity of the gas has been conducted, make and deliver a report of the results of his testing to the local authority or justices by whom he was appointed, and to the undertakers, and such report shall be receivable in evidence.

Access to testing place.

34. The undertakers shall give to the gas examiner and to his assistants, and to every local authority within the limits of the special Act, and their agents, access to the testing place, and shall afford all facilities for the proper

(*g*) As to subsequent improvements in such apparatus, see *Brentford Gas Co.* v. *Chiswick U. D. C.* (1908), 72 J. P. 378; 6 L. G. R. 725.

(*h*) Testing may be carried on on Sundays (*London C. C.* v. *South Metropolitan Gas Co.*, [1904] 1 Ch. 76; 68 J. P. 5). An action lies at the instance of the local authority to enforce the right of the gas examiners to test accordingly (*ibid.*).

The L. G. B. informed a rural district council that it did not appear to them that the council had any power under the section to appoint a gas examiner to test the gas supplied in the parishes forming the rural district. They were of opinion that the parish councils in the district within the limits of the gas company were the local authority for the purposes of the Act.

execution of this Act; and in case the undertakers make default in complying with any of the provisions of this section they shall for every such default be liable to a penalty not exceeding five pounds to the local authority or to the persons making the application.

Accounts.

35. The undertakers shall fill up and forward to the local authority of every district within the limits of the special Act, on or before the twenty-fifth day of March in each year, an annual statement of accounts, made up to the thirty-first day of December then next preceding, as near as may be in the form and containing the particulars specified in the Schedule B. to this Act annexed. Accounts etc.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

The Board of Trade, with the consent of the undertakers, may alter the said forms for the purpose of adapting them to the circumstances of the undertaking, or of better carrying into effect the objects of this section.

In case the undertakers make default in complying with the provisions of this section they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues (*i*).

Penalties.

36. Whenever the undertakers neglect or refuse to give a supply of gas to any owner or occupier of premises within the limits of the special Act entitled to the same, under such pressure as is prescribed, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues (*k*). Penalty for failure to supply gas.

Whenever the undertakers neglect or refuse to supply gas as by this Act required to all or any of the public lamps in accordance with the provisions of this Act, they shall be liable to a penalty not exceeding forty shillings for each default (*l*).

(*i*) See *Dudley Gaslight Co.* v. *Warmington*, *ante*, p. 1538. Observe that an annual account must also be sent to the clerk of the peace under 10 & 11 Vict. c. 15, s. 38, *ante*, p. 1403. A local Act which incorporated the Gasworks Clauses Act, 1847, except so far as it might be varied by the special Act, prescribed by s. 32 a special form in accordance with which the annual accounts of the company were to be made up, in lieu of the provisions contained in s. 38 of the Act of 1847. By s. 49 of the Act of 1847 undertakers are not to be exempted from any general Act relating to gasworks which may be passed in any future session. The appellants made out their annual statement of accounts in the form prescribed by s. 32 of their special Act, and did not furnish to the respondent, on application, a copy of an annual statement in the form prescribed by the text:—*Held*, distinguishing *Dudley Gaslight Co.* v. *Warmington*, *ante*, p. 1538, that as the appellants' special Act prescribed the form in which the annual statement of accounts was to be made up, the provisions in the text relating to the form of accounts did not apply (*Leamington Priors Gas Co.* v. *Davis* (1887), 18 Q. B. D. 107; 51 J. P. 360).

(*k*) A company who improperly cut off a supply of gas are liable under this section (*Commercial Gas Co.* v. *Scott* (1876), L. R. 10 Q. B. 400; 40 J. P. 214). The remedy under this section or by indictment are the only remedies for the supply of insufficient or impure gas. No action will lie against the undertakers (*Clegg, Parkinson & Co.* v. *Earby Gas Co.*, [1896] 1 Q. B. 592). Judgment in the High Court on a case stated by justices on an information under this section is a judgment in a criminal cause or matter, and no appeal lies to the Court of Appeal (*Southport Corporation* v. *Birkdale U. D. C.* (1897), 76 L. T. 318; 18 Cox, C. C. 537).

(*l*) As to the liability of the company when the supply to public lamps has been prevented by exceptional frosts, see *In re Richmond Gas Co. and Richmond Corporation*, *ante*, p. 1543. In view of s. 7 of the Gasworks Clauses Act, 1847, *ante*, p. 1396, the undertakers are not liable to penalties under this section for neglect or refusal to supply gas to a lamp in

If it shall be proved to the satisfaction of any two justices, not being shareholders in the undertaking, after hearing the parties, that on any day the gas supplied by the undertakers is under less pressure, of less illuminating power, or of less purity than it ought to be according to the provisions of this or the special Act, the undertakers shall in every such case forfeit and pay to the local authority or other persons making application for testing the gas such sum not exceeding twenty pounds as the justices shall determine.

Penalties not cumulative.

Penalties imposed on the undertakers for one and the same offence by several Acts of Parliament shall not be cumulative, and for such purpose the special Act and the Acts incorporated therewith shall be deemed several Acts.

Cost of experiment to be paid according to event.

37. Where the gas examiner is appointed by the justices as aforesaid, the costs of and attending such experiment, including the remuneration to be paid to the person making the same, and the costs of the proceedings before the justices, shall be ascertained by such justices, and in the event of any penalty being imposed on the undertakers shall be paid, together with such penalty, by the undertakers, but in the event of no penalty being imposed the costs shall be in the discretion of the justices.

Penalty for injuring meters.

38. Every person who wilfully, fraudulently, or by culpable negligence injures or suffers to be injured any pipes, meter, or fittings belonging to the undertakers, or alters the index to any meter, or prevents any meter from duly registering the quantity of gas supplied, or fraudulently abstracts, consumes, or uses gas of the undertakers, shall (without prejudice to any other right or remedy for the protection of the undertakers or the punishment of the offender) for every such offence forfeit and pay to the undertakers a sum not exceeding five pounds, and the undertakers may in addition thereto recover the amount of any damage by them sustained; and in any case in which any person has wilfully or fraudulently injured or suffered to be injured any pipes, meter, or fittings belonging to the undertakers, or altered the index to any meter, or prevented any meter from duly registering the quantity of gas supplied, the undertakers may also, until the matter complained of has been remedied, but no longer, discontinue the supply of gas to the person so offending (notwithstanding any contract previously existing); and the existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using gas of undertakers, when such meter is under the custody or control of the consumer, shall be primâ facie evidence that such alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter.

RECOVERY OF GAS RENTS.

Incoming tenants not liable to pay arrears of gas rents, etc.

39. In case any consumer of gas supplied by the undertakers leaves the premises where such gas has been supplied to him without paying the gas rent or meter rent due from him, the undertakers shall not be entitled to require from the next tenant of such premises the payment of the arrears left unpaid by the former tenant, unless such incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears (*m*).

a private passage where the owner objects to their laying the pipe (*Bellamy* v. *Liverpool United Gas Co.* (1904), 68 J. P. 540; 2 L. G. R. 1182)

(*m*) See *Gaslight and Coke Co.* v. *Meade* (1876), 45 L. J. M. C. 71; 40 J. P. 662; *Gaslight and Coke Co.* v. *Cannon Brewery Co.*, [1904] A. C. 331; 68 J. P. 461; *Ex parte Mason, In re Smith*, and *Paterson* v. *Gas Light and Coke Co.*, *ante*, p. **1540**.

40. If any person supplied with gas or with any gas meter or fittings by the undertakers neglect to pay to the undertakers the rent due for such gas or the rent (*n*) or money due to the undertakers for the hire or fixing of such meter, or any expenses lawfully incurred by the undertakers in cutting off the gas from the premises of such person, the undertakers may recover the sum so due in like manner as a penalty under this Act. Recovery of rents, etc.

41. Whenever any person neglects to pay any rent or sum due and payable by him to the undertakers, the undertakers may recover the same with full costs of suit, in any court of competent jurisdiction, and the remedy of the undertakers under this enactment shall be in addition to their other remedies for the recovery of such rent or sum. Recovery of sums due to undertakers.

Legal Proceedings.

42. Any summons or warrant issued for any of the purposes of this Act may contain, in the body thereof or in a schedule thereto, several names and several sums. Contents of summons or warrant.

43. Any justice who issues a warrant of distress in pursuance of the provisions of this Act may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the justice, and shall be included in the warrant of distress for the recovery of such money. Warrant of distress shall include costs.

44. All offences and penalties under this Act, and all money forfeited, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Gasworks Clauses Act, 1847, with respect to the recovery of penalties (*o*). Summary proceedings. 10 & 11 Vict. c. 15.

45. Every notice which the undertakers are by this Act required to serve upon any person shall be served by being delivered to the person for whom it is intended, or by being left at his usual or last known place of abode, or sent by post addressed to such persons, or if such person or his address be not known to the undertakers, and cannot after due inquiry be found or ascertained, then by being affixed for three days to some conspicuous part of the premises to which such notice relates. Service of notices by undertakers.

46. No justice or judge of any county court or quarter sessions shall be disqualified from acting in the execution of this Act by reason of his being liable to the payment of any gas rent or other charge under this Act. Liability to gas rent not to disqualify justices from acting.

SCHEDULE A.

Part I. [Sect. 28.]

Regulations in respect of Testing Apparatus.

1. *The apparatus for testing the illuminating power of the gas* shall consist of the improved form of Bunsen's photometer, known as Letheby's open 60-inch photometer, or Evans' inclosed 100-inch photometer, together with a proper meter, minute clock, governor, pressure gauge, and balance.

The burner to be used for testing the gas shall be such as shall be prescribed.

(*n*) This is not a *rent* within the meaning of the Bankruptcy Act, 1869, s. 34. See *Ex parte Harrison, In re Peake* (1883), 13 Q. B. D. 753.

(*o*) See 10 & 11 Vict. c. 15, s. 40, *ante*, p. 1404, incorporating 8 & 9 Vict. c. 20, ss. 140 *et seq.*, *ante*, p. 1369.

The candles used for testing the gas shall be sperm candles of six to the pound, and two candles shall be used together.

2. *The apparatus*—

(a) *For testing the presence in the gas of sulphuretted hydrogen.*—A glass vessel containing a strip of bibulous paper moistened with a solution of acetate of lead, containing sixty grains of crystallized acetate of lead dissolved in one fluid ounce of water.

[Sects. 12, 32.]

PART II.

Rules as to mode of Testing Gas.

I.—*Mode of Testing for Illuminating Power.*

The gas in the photometer is to be lighted at least fifteen minutes before the testings begin, and it is to be kept continuously burning from the beginning to the end of the tests.

Each testing shall include ten observations of the photometer made at intervals of a minute.

The consumption of the gas is to be carefully adjusted to five cubic feet per hour.

The candles are to be lighted at least ten minutes before beginning each testing, so as to arrive at their normal rate of burning, which is shown when the wick is slightly bent and the tip glowing. The standard rate of consumption for the candles shall be 120 grains each per hour. Before and after making each set of ten observations of the photometer the gas examiner shall weigh the candles, and if the combustion shall have been more or less per candle than 120 grains per hour, he shall make and record the calculations requisite to neutralise the effects of this difference.

The average of each set of ten observations is to be taken as representing the illuminating power of that testing.

II.—*Mode of Testing.*

(a) *For sulphuretted hydrogen.*—The gas shall be passed through the glass vessel containing the strip of bibulous paper moistened with the solution of acetate of lead for a period of three minutes, or such longer period as may be prescribed; and if any discolouration of the test paper is found to have taken place, this is to be held conclusive as to the presence of sulphuretted hydrogen in the gas.

SCHEDULE B.

[Sect. 35.]

Form of Annual Accounts.

The Gas Company.

Year ended 31st December, 18 .

A.—*Statement of Share Capital, on the 31st December, 18* .

1. Description of Capital.	2. Maximum Dividend authorised.	3. Number of Shares issued.	4. Nominal Amount of Share.	5. Called up per share.	6. Total paid up.	7. Amount issued, but not paid up.	8. Remaining to be issued.	9. Total Amounts authorised.

B.—*Statement of Loan Capital, on the 31st December, 18* .

1. Description of Loan (Mortgage, Bond, Debenture, Stock, etc.).	2. Rate per Cent. of Interest.	3. Total Amounts borrowed at 31st December, 18 .	4. Remaining to be borrowed.	5. Total Amounts authorised.

Total share capital paid up (see A.) .. .. .. £
Do. loan do. borrowed (see B.) .. .. .. £

Total capital received .. .. .. £

C.—*Capital Account, for the year ended 31st December, 18 .*

——	Expenditure to 31st December, 18 .	Expended this Year.	Total to 31st December, 18 .	——	Certified Receipts, 31st December, 18 .	Received during Year.	Total Receipts to 31st December, 18 .
	£ s. d.	£ s. d.	£ s. d.		£ s d.	£ s. d.	£ s. d.
1 To expenditure to 31st December, 18				1. By ordinary shares of £ each ..			
Since that Date.				2. ,, ditto of £ each			
2. To lands acquired, including law charges..				3. ,, preference shares of £ each .			
3. ,, new buildings, manufacturing plant, machines, storage works, and other structures, connected with manufacture..				4. ,, debenture stock			
4. ,, new mains and service pipes (not being in place of old ones), including laying same, paving, and other works connected with distribution				5. ,, mortgages and bonds			
5. ,, new meters (not in place of old ones), including fixing ..				6. ,, amount received in anticipation of calls..			
6. ,, costs of promoting special Act..							
7. ,, special items (if any)							
Total expenditure							
To balance of capital account				Total .. .. £			
£							

D.—*Revenue Account, for the year ended 31st December, 18 .*

	£ s. d.	£ s. d.
To Manufacture of Gas.		
1 Coals, including dues, carriage, unloading, and all expenses of depositing same on works		
2 Purifying materials, oil, water, and sundries at works		
3. Salaries of engineers, including chief engineer (if any), superintendents, and officers at works		
4. Wages and gratuities at works..		
5. Repairs and maintenance of works and plant (including renewal of retorts), machines, apparatus, tools, materials, and labour .. .. £		
Less old material sold .. .. £		
To Distribution of Gas.		
6. Salaries of surveyor, chief inspector, inspectors, assistant inspectors, and clerks in light office		
7. Repair, maintenance, and renewal of mains, and of service pipes, including materials, laying and paving, and labour		
8 Repairing, renewing, and re-fixing meters		
To Public Lamps.		
9 Lighting and repairing		
To Rents, Rates, and Taxes.		
10. Rents		
11. Rates and Taxes..		
To Management.		
12. Directors' allowances		
13. Salaries of secretary, accountant, and clerks, office keepers, and messengers		
14. Collectors' commission or salaries		
15. Stationery and printing..		
16 General establishment charges and incidentals		
17. Auditor		
To Law and Parliamentary Charges.		
18. Law		
19. Parliamentary (oppositions)		
20 To depreciation fund for works on leasehold lands (if any)		
21. To bad debts		
To other items (if any)		
Total expenditure		
Balance carried to profit and loss account, E. .. .. £		

	£ s. d.	£ s. d.
By Sale of Gas.		
1. Common gas (cubic feet), at / per 1,000 cubic feet		
2. Cannel gas (cubic feet), at / per 1,000 cubic feet		
3. Public lighting and under contracts		
4. Rental of meters..		
By Residual Products		
5. Coke, less labour and cartage ..		
6. Breeze " " ..		
7 Tar " " ..		
8. Ammoniacal liquor, less labour and cartage		
9. By rents		
10. By transfer fees		
By other items (if any)		
Tota receipts .. .. £		

Dr. E.—*Profit and Loss Account (Net Revenue) for the year ended 31st December, 18* . *Cr.*

	£	s.	d.		£	s.	d.
1. To amount carried to Reserve Fund Account, F. (if any), from profits of 18				1. By balance of net profit brought from last account (31st December, 18)			
2. ,, interest on temporary loans, and moneys received in anticipation of calls				2. ,, amount drawn from reserved fund (if any) .. less dividend paid for the half-year ended 31st December, 18			
3. ,, ditto on mortgages and bonds accrued to 31st December, 18				3. Balance brought from Revenue Account, D., being profit for year to December, 18			
4. ,, ditto on debenture stock to ditto				4. Interest on moneys deposited			
5. ,, half-year's dividend on 1st preferential to 30th June, 18							
6. ,, ditto, 2nd preferential to ditto							
7. ,, ditto on ordinary shares at per cent. ..							
8. ,, balance of net profit to be carried to next account subject to half-year's dividends to 31st December, 18 .							
£				£			

F.—*Reserved Fund Account for the year ended 31st December, 18* .

	£	s.	d.		£	s.	d.
1. Amount (if any) carried to Profit and Loss Account (E.) to make up deficiencies of dividends to 31st December, 18				1. By balance brought from last account			
2. Amount paid for extraordinary claim or demand (if any)				2. ,, balance brought from Profit and Loss Account (E.) ..			
3. Amount of balance to be carried to next account ..				3. ,, interest on amount invested			
£				£			

Like accounts must be given for depreciation fund for works on leaseholds, if any.

G.—*Statement of Coals, during the year ended 31st December, 18 .*

Description of Coal.	In Store, 31st December, 18 .	Received during Year.	Carbonised or used during Year.	In Store, 31st December, 18 .
	Tons.	Tons	Tons.	Tons.
Common				
Cannel				

H.—*Statement of Residual Products, for the year ended 31st December, 18 .*

Description of Residual.	In Store, 31st December, 18 . Estimated.	Made during Year. Estimated.	Used in Manufacture during Year. Estimated.	Sold during Year.	In Store, 31st December, 18 . Estimated.
Coke—common, chaldrons of 36 bushels ..					
cannel ,, ,, ..					
Breeze ,, ,, ..					
Tar, gallons					
Ammoniacal liquor, butts of 108 gallons ..					

I.—*General Balance Sheet.*

On 31st December, 18 .

Dr.	£ s. d.	*Cr.*	£ s. d.
1. To CAPITAL ACCOUNT— Balance at credit thereof (Account C.)		1. By cash at Bankers	
2. ,, PROFIT AND LOSS ACCOUNT— Balance at credit thereof (Account E.)		2. ,, ,, on deposit or at interest	
3. ,, RESERVED FUND— Balance at credit thereof (Account F.)		3 ,, coals and stock on hand, 31st December, 18 ..	
4. ,, DEPRECIATION FUND (for works on leasehold lands)— Balance at credit thereof (Account .)		4. ,, coke and breeze ,, ,,	
5. ,, Unpaid dividends..		5. ,, tar and other products ,, ,,	
		6. ,, sundry stores , ,,	
6. ,, Interest accrued and unpaid on mortgages, bonds, and debenture stock, and other loans, to 31st December, 18		7. ,, gas and meter rental: balance of this account due to the company on 31st December, 18 , less deposits and prepayments	
7. ,, Sundry tradesmen and others, for amount due for coals, stores, etc., to 31st December, 18		8. ,, coke and other residuals ,, ,,	
8. ,, WAGES AND CONTINGENCIES— Amount due to 31st December, 18		9. ,, sundry accounts ,, ,,	
9 ,, Other items (if any)		,, special items (if any) including investments	
£		£	

THE LOCAL GOVERNMENT BOARD ACT, 1871.

(34 & 35 VICT. c. 70.) (*p*)

An Act for constituting a Local Government Board, and vesting therein certain functions of the Secretary of State and Privy Council concerning the Public Health and Local Government, together with the powers and duties of the Poor Law Board. [14th August 1871.]

PRELIMINARY.

1. This Act may be cited as "The Local Government Board Act, 1871." Short title.

ESTABLISHMENT OF LOCAL GOVERNMENT BOARD.

2. A Board shall be established, to be called the Local Government Board, and all powers and duties vested in or imposed on the Poor Law Board by the several Acts of Parliament relating to the relief of the poor and any other Acts, or vested in or imposed on one of her Majesty's principal Secretaries of State by the enactments in that behalf mentioned in the first part of the Schedule annexed hereto, so far as such powers and duties relate to England (*q*), or vested in or imposed on her Majesty's most honourable Privy Council by the enactments in that behalf specified in the second part of the said Schedule, shall be transferred to and imposed on the said Local Government Board, and except as otherwise provided by this Act, shall be exercised and performed by such Board in like manner and form, and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before the passing of this Act have been exercised and performed by the authorities in whom the same were then vested respectively, or as near thereto as circumstances admit. Establishmen of Local Government Board.

3. The Local Government Board shall consist of a president to be appointed by her Majesty, and to hold office during the pleasure of her Majesty, and of the following ex officio members, that is to say, the Lord President of her Majesty's most honourable Privy Council, all her Majesty's principal Secretaries of State for the time being, the Lord Privy Seal, and the Chancellor of the Exchequer. Constitution of Local Government Board.

. . . . .

The Local Government Board may appoint in writing such secretaries, assistant secretaries, inspectors, auditors, clerks, messengers, and other officers as the Board may, with the sanction of the Treasury, determine.

No payment shall be made in respect of their duties under this Act to the ex officio members of the Local Government Board, but there shall be paid out of moneys provided by Parliament to the president, secretaries, and other officers of the Board such salaries as the Treasury may from time to time determine: Provided, that the appointment of any officer to a new office made by the Local Government Board in pursuance of this section shall be deemed to be temporary only until the salary of such office (*r*) has been provided for by Parliament.

4. The president and one of the secretaries of the Local Government Board shall at the same time be capable of being elected to and of voting in the Commons House of Parliament, and the office of president shall be President and one of the secretaries may sit in Parliament.

(*p*) See 21 & 22 Vict. c. 97, *ante*, p. 1479. This Act is here printed as left after the various repeals effected therein by the S. L. R. (No. 2) A., 1893.

(*q*) See the additional powers transferred to the Board by 35 & 36 Vict. c. 79, ss. 34—36, and preserved by 38 & 39 Vict. c. 55 Sched. V., Part III., *ante*, p. 698.

(*r*) *Sic.*

30 & 31 Vict. c. 102. 31 & 32 Vict. c. 48. 31 & 32 Vict. c. 49.

deemed to be an office included in Schedule H. of the Representation of the People Act, 1867; in Schedule H. of the Representation of the People Scotland) Act, 1868; and in Schedule E. of the Representation of the People (Ireland) Act, 1868.

Seal, style, and acts of Board.

5. The Local Government Board may adopt an official seal, and describe themselves generally by the style and title of "The Local Government Board," and, save as hereinafter provided, any act to be done or instrument to be executed by or on behalf of the Local Government Board may be done or executed in the name of that Board by the president or by any member of the Local Government Board, or by a secretary or assistant secretary, if such secretary or assistant secretary is authorised to do or execute the same by any General Order of the Local Government Board (*rr*).

31 & 32 Vict. c. 37.

A Rule, Order, or Regulation made by the Local Government Board shall be valid if it is made under the seal of the Board, and signed by the president or one of the ex officio members of the Board, and countersigned by a secretary or assistant secretary; and the production of such primâ facie evidence of any of the said Rules, Orders, or Regulations as is required by the Documentary Evidence Act, 1868 (*s*), with respect to the Rules, Orders, or Regulations of the Poor Law Board, shall, until the contrary is shown, be a sufficient proof that any such Rule, Order, or Regulation of the Local Government Board was duly made (*t*).

Distribution of business.

6. . . . The Local Government Board may, by Order, distribute the business to be performed under the Local Government Board amongst the several officers and persons transferred to the Board by this Act in such manner as the Local Government Board may think expedient (*u*).

Construction of Acts and documents and power of Local Government Board.

7. In the construction of and for the purposes of any Act of Parliament, contract, or other document passed, entered into, or made before the establishment of the Local Government Board, but so far only as may be necessary for exercising the powers and discharging the duties by this Act transferred to and imposed on the Local Government Board, the name of such Board shall, according to circumstances, be deemed to be substituted for the Poor Law Board, one of her Majesty's principal Secretaries of State (*x*), or her Majesty's most honourable Privy Council, as the case may require; and any Act or thing which might, if this Act had not passed, have been done by the Poor Law Board, or by one of her Majesty's principal Secretaries of State, or by her Majesty's most honourable Privy Council, so far as relates to the powers and duties hereby transferred, may be done by the Local Government Board.

Duplicate returns to be sent to Local Government Board.

23 & 24 Vict. c. 51.

8. Where under an Act, whether passed before or after the passing of this Act, any return relative to any rate, toll, tax, or due raised in England (other than such as is raised for the public revenue of the United Kingdom) is required to be sent to one of her Majesty's Secretaries of State or any other department of the Government, a duplicate of such return shall in like manner be sent to the Local Government Board, and any person failing to send the same shall be subject to the like penalties as a person neglecting to send any return under the Local Taxation Returns Act, 1860 (*y*).

(*rr*) See the observations on this section in *R.* v. *L. G. B.*, *Ex parte Arlidge*, [1914] 1 K. B. 160.

(*s*) See also the Documentary Evidence Act, 1882.

(*t*) See as to publication of their Orders, 35 & 36 Vict. c. 79, s. 48, re-enacted in the P. H. A., 1875, Sched. V., Part III., *ante*, p. 700.

(*u*) See also the re-enacted provisions of 35 & 36 Vict. c. 79, s. 37, *ante*, p. 699.

(*x*) See further, 35 & 36 Vict. c. 79, s. 34, re-enacted, *ante*, p. 698, whereby the consent of the L. G. B. is substituted for that of other departments in the cases there stated.

(*y*) See the Local Taxation Returns Act, 1860, *ante*, p. 1481, and 1877, *post*, p. 1668; also the District Auditors Act, 1879, s. 3, *post*, p. 1688.

SCHEDULE referred to in the foregoing Act (z).

Part I. Sect. 2

Powers and Duties of Secretary of State.

Subject.	Act.
Registration of Births, Deaths, and Marriages	6 & 7 Will. 4, c. 86. 7 Will. 4 & 1 Vict. c. 22.
Baths and Washhouses	9 & 10 Vict. c. 74. 10 & 11 Vict. c. 61.
Public Improvement	23 & 24 Vict. c. 30.
Towns Improvement	10 & 11 Vict. c. 34.
Returns. Local Taxation	23 & 24 Vict. c. 51. And any Acts amending the said Acts, and conferring powers on the said Secretary of State.

Part II.

Powers and Duties of Privy Council.

Subject.	Act.
Vaccination	30 & 31 Vict. c. 84. And any Acts amending the said Acts, and conferring powers on the said Privy Council.

THE PETROLEUM ACT, 1871.

(34 & 35 Vict. c. 105.) (*a*)

An Act for the safe keeping of Petroleum and other substances of a like nature.

[21st August 1871.]

1. This Act may be cited as "The Petroleum Act, 1871." Short title.

2. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter assigned to them; (that is to say,) Interpretation.

The term "borough" means—

In England any place for the time being subject to the provisions of the Municipal Corporations Act, 1835 (*b*), and the Acts amending the same. 5 & 6 Will. 4, c. 76.

. . . . .

(*z*) Several of the Acts originally contained in this Schedule are consolidated in the P. H. A., 1875, and have been entirely repealed and are, therefore, here omitted; the others are printed in this Appendix in so far as they concern local authorities.

(*a*) See the amending Acts: The Petroleum Act, 1879, and the Petroleum (Hawkers) Act, 1881, *post*, pp. 1694, 1700. The preamble of this Act, the clause of enactment, and certain definitions in s. 2, were repealed by the S. L. R. (No. 2) A., 1893, and the S. L. R. A. 1894.

(*b*) See now the Municipal Corporations Act, 1882, s. 243.

The term "person" includes a body corporate :

. . . . .

The term "harbour" means any harbour properly so-called, whether natural or artificial, and any port, haven, estuary, tidal river or other river, canal or inland navigation navigated by sea-going ships, and any dock, pier, jetty, or other works in or at which ships do or can ship or unship goods or passengers :

The term "harbour authority" includes any persons or person being or claiming to be proprietors or proprietor of or intrusted with the duty or invested with the power of improving, maintaining, or managing any harbour :

The term "ship" includes every description of vessel used in navigation, whether propelled by oars or otherwise (*c*) :

. . . . .

Definition of "petroleum."

3. For the purposes of this Act the term "petroleum" includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum, or any of the above-mentioned oils . . . (*d*).

Byelaws as to ship carrying petroleum.

4. Every harbour authority shall frame and submit for confirmation to the Board of Trade byelaws for regulating the place or places at which ships carrying petroleum to which this Act applies are to be moored in the harbour over which such authority has jurisdiction, and are to land their cargo, and for regulating the time and mode of, and the precautions to be taken on, such landing. The harbour authority shall publish the byelaws so framed with a notice of the intention of such authority to apply for the confirmation thereof. The Board of Trade may confirm such byelaws with or without any omission, addition, or alteration, or may disallow the same.

Every such byelaw when confirmed shall be published by the harbour authority, and may be from time to time altered or repealed by a byelaw made in like manner. Byelaws under this section shall be published in such manner as the Board of Trade may from time to time direct.

If at any time it appears to the Board of Trade that there is no byelaw for the time being in force under this section in any harbour the Board of Trade may, by notice, require the harbour authority of such harbour to frame and submit to them a byelaw for the purposes of this section, and if such harbour authority make default in framing a byelaw and obtaining the confirmation thereof within the time limited by such notice the Board of Trade may make a byelaw for the purposes of this section, and such byelaw shall have the same effect as if it had been framed by the harbour authority and confirmed by the Board of Trade.

Where any ship or cargo is moored, landed, or otherwise dealt with in contravention of any byelaw for the time being in force under this Act in any harbour, the owner and master of such ship, or the owner of such cargo, as the case may be, shall incur a penalty not exceeding fifty pounds for each day during which such contravention continues, and it shall be lawful for the harbour master or any other person acting under the orders of the harbour authority of such harbour to cause such ship or cargo to be removed,

(*c*) Definitions of "the S. J. Acts" and "court of summary jurisdiction" are now contained in the Interpretation Act, 1889, s. 13, and the corresponding definitions formerly included in this Act are now repealed by the S. L. R. (No. 2) A., 1893.

(*d*) The remainder of this section is repealed by 42 & 43 Vict. c. 47, s. 6, *post*, p. 1695, and s. 2 of that Act supplies a definition of "petroleum to which this Act (*i.e.*, the Act of 1871) applies." And see *Jones* v. *Cook* (1871), L. R. 6 Q. B. 505 ; *London C. C.* v. *Holzapfels Composition Co.* (1899), 68 L. J. Q. B. 886 ; 63 J. P. 615.

at the expense of the owner thereof, to such place as may be in conformity with the said byelaw, and all expenses incurred in such removal may be recovered in the same manner in which penalties are by this Act made recoverable.

Notice by owner or master of ship carrying petroleum.

5. The owner or master of every ship carrying a cargo any part of which consists of petroleum to which this Act applies, on entering any harbour within the United Kingdom, shall give notice of the nature of such cargo to the harbour authority having jurisdiction over such harbour.

If such notice is not given the owner and master of such ship shall each incur a penalty not exceeding the sum of five hundred pounds, unless it is shown to the satisfaction of the court before which the case is tried that neither the owner nor the master knew the nature of the goods to which the proceedings relate, nor could with reasonable diligence have obtained such knowledge.

Label on vessels containing petroleum.

6. Where any petroleum to which this Act applies—

(a) Is kept at any place except during the seven days next after it has been imported; or

(b) Is sent or conveyed by land or water between any two places in the United Kingdom; or

(c) Is sold or exposed for sale;

the vessel containing such petroleum shall have attached thereto a label in conspicuous characters, stating the description of the petroleum, with the addition of the words "highly inflammable," and with the addition—

(a) In the case of a vessel kept, of the name and address of the consignee or owner:

(b) In the case of a vessel sent or conveyed, of the name and address of the sender:

(c) In the case of a vessel sold or exposed for sale, of the name and address of the vendor.

All petroleum to which this Act applies which is kept, sent, conveyed, sold, or exposed for sale, in contravention of this section, shall, together with the vessel containing the same, be forfeited, and in addition thereto the person keeping, sending, selling, or exposing for sale the same shall for each offence be liable to a penalty not exceeding five pounds.

Regulations as to storage of petroleum.

7. Save as hereinafter mentioned petroleum to which this Act applies shall not be kept (*e*), except in pursuance of a licence given by such local authority as is in this Act mentioned.

All petroleum kept in contravention of this section shall, together with the vessel containing the same, be forfeited, and in addition thereto the occupier of the place in which such petroleum is so kept shall be liable to a penalty not exceeding twenty pounds a day for each day during which such petroleum is so kept.

This section shall not apply to any petroleum, kept either for private use or for sale, provided the following conditions are complied with:

(1) That it is kept in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped:

(*e*) This was held to apply to keeping petroleum in a cart for the purpose of being hawked (*Coleman* v. *Goldsmith* (1879), 43 J. P. 718). But see now 44 & 45 Vict. c. 67, *post*, p. 1700. By s. 5 of the Locomotives on Highways Act, 1896, the keeping and use of petroleum or of any other inflammable liquid or fuel for the purpose of light locomotives, shall be subject to regulations made by a Secretary of State, and regulations so made shall have effect notwithstanding anything in the Petroleum Acts, 1871—1881. For the regulations made under this enactment, and dated July 31st, 1907, Stat. R. & O., 1907, p. 424,—see *post*, Appendix II. Petroleum kept for fuel for light locomotives if kept in accordance

(2) That the aggregate amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons.

Definition of local authority

8. The following bodies shall respectively be the local authority to grant licences under this Act in the districts hereinafter mentioned; (that is to say,)

(1) In the City of London, except as hereafter in this section mentioned, the court of the Lord Mayor and aldermen of the said city:

18 & 19 Vict. c. 120.

(2) In the metropolis, (that is, in places for the time being within the jurisdiction of the Metropolitan Board of Works under the Metropolis Management Act, 1855,) except the City of London, and except as hereafter in this section mentioned, the Metropolitan Board of Works (*f*):

(3) In any borough in England . . . except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the council:

(4) In any place in England . . . except as hereafter in this section mentioned, within the jurisdiction of any trustees or improvement commissioners appointed under the provisions of any local or general Act of Parliament, and not being a borough or comprising any part of a borough, the trustees or commissioners:

21 & 22 Vict. c. 98.

(5) In any place in England (except as hereafter in this section mentioned) within the jurisdiction of a local board constituted under the Local Government Act, 1858 (*g*), and not being any of the districts before mentioned or comprising any part of any such district, the local board:

. . . . .

(8) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority:

(9) In any place in which there is no local authority as before in this section defined in England . . . the justices in petty sessions assembled . . . (*h*).

Mode of granting licences.

9. (*i*) Licences in pursuance of this Act shall be valid if signed by two or more of the persons constituting the local authority, or executed in any other way in which other licences, if any, granted by such authority are executed. Licences may be granted for a limited time and may be subject to renewal or not in such manner as the local authority think necessary.

There may be annexed to any such licence such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which petroleum to which this Act applies is to be stored, the facilities for the testing of such petroleum from time to time, the mode of carrying such petroleum within the district of the licensing authority,

with these regulations need not also be kept in accordance with the provisions of this Act (*Godfrey* v. *Napier* (1902), 18 T. L. R. 31).

(*f*) The powers and duties of the Metropolitan Board of Works are now transferred to the London C. C. by the L. G. A., 1888, s. 40.

(*g*) See now the P. H. A., 1875, s. 313, *ante*, p. 649.

(*h*) Words relating to Scotland or Ireland only are omitted from this section. The powers, duties, and liabilities of justices out of sessions (*i.e.*, out of quarter sessions) in the execution of this Act as the local authority are now transferred to the district council by ss. 27, 32 of the L. G. A., 1894, *ante*, pp. 1009, 1013.

(*i*) A licence now gives a right to hawk petroleum. See the Petroleum (Hawkers) Act, 1881, s. 1, *post*, p. 1700. Any conditions inconsistent with that right are void (s. 3).

and generally as to the safe keeping of such petroleum as may seem expedient to the local authority.

Any licensee violating any of the conditions of his licence shall be deemed to be an unlicensed person. There may be charged in respect of each licence granted in pursuance of this Act such sum, not exceeding five shillings, as the local authority may think fit to charge.

In case of refusal of licence the applicant may memorialise Secretary of State or Lord Lieutenant.

10. If on any application for a licence under this Act the local authority refuse the licence, or grant the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, deliver to him in writing under the hand or hands of one or more of the persons constituting the local authority, a certificate of the grounds on which they refused the licence or annexed conditions to the grant thereof.

The applicant within ten days from the time of the delivery of the certificate may transmit the same to a Secretary of State if the application is for a licence in England . . . together with a memorial, praying that notwithstanding such refusal the licence may be granted, or that the conditions may not be imposed, or may be altered or modified in such manner and to such extent as may be set forth in such memorial.

It shall be lawful for the Secretary of State, . . . if he think fit, on consideration of such memorial and certificate, and, if he think it necessary or desirable, after due inquiry and a report by such person as he may appoint for that purpose, to grant the licence prayed for, either absolutely or with such conditions as he thinks fit, or to alter or modify the conditions imposed by the local authority ; and the licence so granted, or altered and modified, as the case may be, when certified under the hand of a Secretary of State, . . . shall be to all intents as valid as if granted by the local authority (*k*).

Testing of petroleum by officer of local authority.

11. Any officer authorised by the local authority may purchase any petroleum from any dealer in it, or may, on producing a copy of his appointment, purporting to be certified by the clerk or some member of the local authority, or producing some other sufficient authority, require the dealer to show him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and to give him samples of such petroleum on payment of the value of such samples.

When the officer has by either of the means aforesaid taken samples of petroleum, he may declare in writing to the dealer that he is about to test the same, or cause the same to be tested, in manner set forth in Schedule One to this Act (*l*), and it shall be lawful for him to test the same or cause the same to be tested at any convenient place at such reasonable time as he may appoint, and the dealer or any person appointed by him may be present at the testing, and if it appear to the officer or other person so testing that the petroleum from which such samples have been taken is petroleum to which this Act applies, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings that may be taken against a dealer in petroleum in pursuance of this Act ; but it shall be lawful for a dealer proceeded against to give evidence in proof that such certificate is incorrect, and thereupon the court before which any such proceedings may be taken may, if such court think fit, appoint some person skilled in testing petroleum to examine the samples to which such certificate relates, and to declare whether such certificate is correct or incorrect (*m*).

(*k*) See note (*i*), *ante*, p. 1560.

(*l*) This Schedule was repealed by the S. L. R. A., 1883. See now 42 & 43 Vict. c. 47, s. 2, *post*, p. 1694.

(*m*) It is a question of fact for the court to decide whether the statutory directions as to testing have been complied with (*Beck* v. *Stringer* (1871), L. R. 6 Q. B. 497 ; 35 J. P. 710).

Any expenses incurred in testing any petroleum of such dealer in pursuance of this section shall, if such dealer be convicted of keeping, sending, conveying, selling, or exposing for sale, petroleum in contravention of this Act, be deemed to be a portion of the costs of the proceedings against him, and shall be paid by him accordingly. In any other event such expenses shall be paid by the local authority out of any funds for the time being in their hands, and in case the local authority are the justices (*mm*), out of the county rate.

Penalty for refusing information and obstructing officer.

12. Any dealer who refuses to show to any officer authorised by the local authority every or any place or all or any of the vessels in which petroleum in his possession is kept, or to give him such assistance as he may require for examining the same, or to give to such officer samples of such petroleum on payment of the value of such samples, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall incur a penalty not exceeding twenty pounds.

Search for petroleum.

13. Where any court of summary jurisdiction is satisfied by information on oath that there is reasonable ground to believe that any petroleum to which this Act applies is being kept, sent, conveyed, or exposed for sale within the jurisdiction of such court in contravention of this Act, at any place, whether a building or not, or in any ship or vehicle, such court shall grant a warrant by virtue whereof it shall be lawful for any person named in such warrant to enter the place, ship, or vehicle named in such warrant, and every part thereof, and examine the same and search for petroleum therein, and take samples of any petroleum found therein, and if any petroleum to which this Act applies be found therein, which is kept, sent, conveyed, or exposed for sale, in contravention of this Act, to seize and remove such petroleum, and the vessel containing the same, and to detain such petroleum and vessel until some court of summary jurisdiction has determined whether the same are or not forfeited, the proceedings for which forfeiture shall be commenced forthwith after the seizure (*n*).

Any person seizing any petroleum to which this Act applies in pursuance of this section shall not be liable to any suit for detaining the same, or for any loss or damage incurred in respect of such petroleum, otherwise than by any wilful act or neglect while the same is so detained.

If any petroleum to which this Act applies is seized in pursuance of this section in any ship or vehicle, the person seizing the same may use for the purposes of the removal thereof, during twenty-four hours after the seizure, the said ship or vehicle, with the tackle, beasts, and accoutrements belonging thereto, and if he do so shall pay to the owner thereof a reasonable recompense for the use thereof, and the amount of such recompense shall, in case of dispute, be settled by the court of summary jurisdiction before whom proceedings for the forfeiture are taken, and may be recovered in like manner as penalties under this Act may be recovered.

Any person who, by himself or by anyone in his employ or acting by his direction or with his consent, refuses or fails to admit into any place occupied by or under the control of such person, any person demanding to enter in pursuance of this section, or in any way obstructs or prevents any person in or from making any such search, examination, or seizure, or taking any such samples as authorised by this section, shall be liable to pay a penalty not exceeding twenty pounds, and to forfeit all petroleum to which this Act applies which is found in his possession or under his control.

(*mm*) See s. 8 (9), *ante*, p. 1560.

(*n*) A constable or officer is empowered by the Petroleum (Hawkers) Act, 1881, s. 4, to seize and detain any petroleum when he has reason to believe that a contravention of that Act is being committed. The marginal note originally referred to 23 & 24 Vict. c. 139, s. 25, which is now repealed by the Explosives Act, 1875, s. 122, and Sched. IV., and general power of search given instead by ss. 73 and 74 of that Act.

14. Her Majesty may from time to time make, revoke, and vary Orders in Council directing this Act or any part thereof to apply to any substance (*o*), and this Act, or the part thereof specified in the Order shall, during the continuance of the Order, apply to such substance, and shall be construed and have effect as if throughout it such substance had been included in the definition of petroleum to which this Act applies, subject to the following qualifications :

Application of Act to other substances.

(1) The quantity of any substance to which this Act is directed by Order in Council to apply, which may be kept without a licence, shall be such quantity only as is specified in that behalf in such Order, or if no such quantity is specified no quantity may be kept without a licence :

(2) The label on the vessel containing such substance shall be such as may be specified in that behalf in the Order.

15 (*p*). In England . . . all offences and penalties under this Act, and all money and costs directed by this Act to be recovered as penalties, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

Summary proceedings for offences, penalties, &c.

. . . . .

Provided as follows :

1. A court of summary jurisdiction shall not impose a penalty exceeding fifty pounds, but any such court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount.

2. . . .

3. The " court of summary jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; (that is to say,)

(a) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of one of the magistrates hereinafter mentioned, sitting alone or with others at some court or other place appointed for the administration of justice ; that is to say, the Lord Mayor, or any alderman of the city of London, a metropolitan police magistrate, a stipendiary magistrate, or some other officer or officers for the time being empowered by law to do alone or with others any act authorised to be done by more than one justice of the peace :

. . . . .

6. No conviction or order made in pursuance of this Act shall be quashed for want of form or be removed by certiorari or otherwise, either at the instance of the Crown or of any private party, into any superior court (*q*).

. . . . .

16. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local or harbour authority by Act of Parliament, law, or custom, and every local authority and harbour authority may exercise such other powers in the same manner as if this Act had not passed ; and nothing in this Act contained shall be

Reservation of previous powers with respect to inflammable substances.

(*o*) This power has been exercised with respect to carbide of calcium. The Order now in force, which repealed all previous Orders, is dated August 8th, 1911.

(*p*) Parts relating to Scotland and Ireland only are omitted from this section.

(*q*) Sub-sections (4), (5), (7), and sub-s. (6) except as above printed, were repealed by the S. J. A., 1884, which substitutes for the repealed parts the corresponding provisions of the S. J. Acts. As to the provisions of sub-s. (6), still in force, see notes to the similar provisions of s. 262 of the P. H. A., 1875, *ante*, p. 579.

deemed to exempt any person from any penalty to which he would otherwise be subject in respect of a nuisance (*r*).

17. [*Repeal.*] (*s*)

* * * * *

THE STEAM WHISTLES ACT, 1872.

(35 & 36 VICT. c. 61.)

An Act to Regulate the Use of Steam Whistles in certain Manufactories (*t*).
[6th August 1872.]

Extent.

1. The Act shall not apply to Scotland.

Use of steam whistles and trumpets.

2. No person shall use or employ in any manufactory, or any other place, any steam whistle (*u*) or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the sanitary authority, and every person offending against this section shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which such offence continues: Provided always, that the sanitary authority, in case they have sanctioned the use of any such instrument as aforesaid, may at any time revoke such sanction on giving one month's notice to the person using the same: Provided also, that it shall be lawful for the Local Government Board, on representation made to them by any person that he is prejudicially affected by such sanction, to revoke the same, and such revocation shall have the same force and effect as if it had been made by the sanitary authority.

Definition. 29 & 30 Vict. c. 90.

3. "Sanitary authority" means the authority at the time being empowered to execute the Nuisance Removal Acts, as defined and extended by the Sanitary Act, 1866 (*x*).

Legal procedure. 11 & 12 Vict. c. 43, etc.

4. All offences and penalties under this Act may be prosecuted and recovered in England in manner directed by the Summary Jurisdiction (England) Acts . . .

(*r*) See as to common law nuisances by storage of inflammable substances in crowded localities, *R.* v. *Lister* (1857), 26 L. J. M. C. 196; Dears. & B. 209; *Hepburn* v. *Lorda* (1865), 34 L. J. Ch. 293; 2 Hem. & M. 345; *St. Helens Corporation* v. *United Alkali Co.*, Times. June 19th, 1901.

(*s*) This section repeals the previous Acts relating to petroleum, but is repealed, together with the Schedule of repealed Acts, by the S. L. R. A., 1883.

(*t*) The short title to this Act is as enacted by the Short Titles Act, 1896. The clause of enactment to this Act was repealed by the S. L. R. (No. 2) A., 1893.

(*u*) L. formerly used a whistle directly connected with an engine boiler, but disconnected it, and used thereafter a gas engine to compress air and store it in a reservoir in his factory, and the same pipe connected therewith produced the same noise:—*Held*, that this was a "steam whistle," and required the consent of the sanitary authority pursuant to the above section (*Herbert* v. *Leigh Mills Co.* (1889), 53 J. P. 679; 5 T. L. R. 449).

(*x*) Now the P. H. A., 1875. See s. 313 of that Act, *ante*, p. 649.

THE METALLIFEROUS MINES REGULATION ACT, 1872.

(35 & 36 VICT. c. 77.)

An Act to Consolidate and Amend the Law relating to Metalliferous Mines (y).

[10th August 1872.]

* * * * *

13. Where any mine to which this Act applies (z) is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred (a), the owner thereof, and every other person interested in the minerals of the mine (b), shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents (c). Fencing of abandoned mine.

Provided that—

(1) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect :

(y) The preamble and clause of enactment of this Act have been repealed by the S. L. R. (No. 2) A., 1893.

The Coal Mines Regulation Act, 1872, referred to in the preamble, is now represented by the Coal Mines Act, 1911, which contains (see s. 26, p. 2139, *post*) a provision on the same point. See also the Quarry Fencing Act, 1887, *post*, p. 1792.

(z) By s. 3 (construed in accordance with s. 83 of the Coal Mines Regulation Act, 1887, and s. 38 (1) of the Interpretation Act, 1889), this Act applies to every mine of whatever description other than a mine to which the Coal Mines Act, 1911, applies : as to which see s. 1 of that Act, *post*, p. 2139. By s. 39, if any question arises whether a mine is one to which this Act or that Act applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final. See *Sims* v. *Evans* (1875), 23 W. R. 730.

(a) This applies to mines abandoned before this Act (*Stott* v. *Dickinson* (1876), 34 L. T. 291). Notice must be given to the inspector of mines when a shaft is abandoned or working thereof discontinued (s. 12).

(b) By s. 41, the term "owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mines. Where a mine was abandoned the owner, who had let it on lease for a term of years subject to a rent or royalties, was held to be a person interested in the minerals within this section, though the lease was still in force and undetermined (*Evans* v. *Mostyn* (1877), 2 C. P. D. 547 ; 41 J. P. 775). Where a person had a lease of a mine from the Duchy of Cornwall on the terms that he was to pay as rent all he might receive in respect of the mine, and 5*s*. yearly in addition, it was held that he was not the owner nor interested within this section (*Arkwright* v. *Evans* (1880), 49 L. J. M. C. 82). Where a lease had expired, the lessee was held not liable, though by his covenant he had agreed to fence abandoned shafts (*Stott* v. *Dickinson*, *supra*). Harbour trustees having a licence to take flints and chalk from a quarry at a certain price, were held not to be owners nor interested in the minerals so as to be obliged to fence it (*Foster* v. *Newhaven Harbour Trustees* (1897), 61 J. P. 629 ; 13 T. L. R. 292). But a lord of the manor entitled to dues of lot, cope, and the third meer under the Derbyshire Mining Act, 1852, was held interested in the minerals and bound to fence (*Devonshire* (*Duke*) v. *Stokes* (1897), 61 J. P. 406 ; 76 L. T. 424). So also was the owner of the soil of an abandoned lead mine being owner of the calc-spar and calk (barytes) it contained (*Stokes* v. *Arkwright* (1897), 66 L. J. Q. B. 845 ; 61 J. P. 775).

A local authority in whom is vested by statute a public well formed by an accumulation of water in the disused shaft of a mine, is not liable under this section to keep the shaft fenced for the prevention of accidents (*Knuckey* v. *Redruth R. D. C.*, [1904] 1 K. B. 382 ; 68 J. P. 172).

(c) A wall round an enclosure ten acres in extent, in which there is a side entrance to a mine, is not a sufficient fence round the side entrance within the meaning of this section (*Foster* v. *Owen* (1893), 62 L. J. M. C. 7 ; 57 J. P. 87).

(2) Where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within fifty yards of any highway, road, footpath, or place of public resort, or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous:

(3) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section he shall be guilty of an offence against this Act (*d*).

18 & 19 Vict. c. 121. 29 & 30 Vict. c. 90.

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, or is required by an inspector as aforesaid to be fenced, shall be deemed to be a nuisance within the meaning of section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866 (*e*).

* * * * *

THE BOROUGH FUNDS ACT, 1872.

(35 & 36 VICT. c. 91.) (*f*)

An Act to authorise the application of Funds of Municipal Corporations and other Governing Bodies in certain cases. [10th August 1872.]

Interpretation of terms.

1. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction (*g*): Provided, however, that in the borough of

(*d*) As to penalties, see s. 31. By s. 35, "No prosecution shall be instituted against the owner or agent of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State." But where the inspector has determined on a prosecution, the information may be laid in his name by an agent employed by him (*Foster* v. *Fyfe*, [1896] 2 Q. B. 104; 60 J. P. 423).

(*e*) See now the P. H. A., 1875, ss. 91, 313, pp. 162, 649, *ante*, and cf. notes to Quarry Fencing Act, 1887, *post*, p. 1792.

(*f*) By the Short Titles Act, 1896, this Act, popularly called Leeman's Act, may be cited as the Borough Funds Act, 1872, without prejudice to any other mode of citation. It has been amended by the Borough Funds Act, 1903, *post*, p. 2031. The preamble and clause of enactment of this Act were repealed by the S. L. R. (No. 2) A., 1893. The preamble recited 20 & 21 Vict. c. 50, and 5 & 6 Will. 4, c. 76, s. 92, both repealed by 45 & 46 Vict. c. 50. Also it referred to the powers of improving, cleansing, paving, etc. conferred on boards of health under 11 & 12 Vict. c. 63, and 21 & 22 Vict. c. 98, repealed by the P. H. A., 1875, s. 343, *ante*, p. 664; but see s. 313 of that Act, *ante*, p. 649.

(*g*) In some previous editions of this Work it was stated that the Act applied to all sanitary authorities. It appears, however, to be the general opinion that it does not apply to rural district councils.

An outbreak of fever having occurred in the defendants' district, the L. G. B. required the defendants to provide a proper water supply. The defendants applied for a Provisional Order, but as they proposed to interfere with certain water rights, the L. G. B. pointed out that, having regard to s. 327 of the P. H. A., 1875, *ante*, p. 653, the procedure must be by Bill, and the defendants thereupon introduced a Bill, which was opposed and eventually thrown out. The plaintiff had acted as the defendants' solicitor, and he

Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge (*h*).

Costs of promoting or opposing Parliamentary and other proceedings for benefit of inhabitants to be charged on borough and local funds, except in certain cases.

2. When in the judgment of a governing body (*i*) in any district it is expedient for such governing body to promote or oppose any local and personal (*k*) Bill or Bills in Parliament, or to prosecute or defend any legal proceedings (*l*) necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing in this Act contained shall authorise any governing body to promote any Bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament (*m*): Provided

claimed payment of the costs in connection with the Bill from the defendants. It was argued that the provisions of the Act applied to a rural sanitary authority, and that the defendants had not complied with these provisions. The court gave no decision on this point, but held that, although the defendants were bound to provide a proper supply of water, they had no duty to apply to Parliament for statutory powers, and consequently that the costs could not be recovered from the defendants (*Cleverton* v. *St. Germans R. S. A.* (1886), 56 L. J. Q. B. 83; 3 T. L. R. 43).

(*h*) The Cambridge Improvement Commissioners were abolished and their powers, etc. transferred to the corporation of the borough by the L. G. B.'s Provisional Orders Confirmation (No. 15) Act, 1889.

(*i*) This phrase, as defined in s. 1, does not include a rural district council nor the overseers of a parish. As to the powers of overseers to oppose a Bill in Parliament for the protection of the poor rate, see *R.* v. *White* (1885), 14 Q. B. D. 358; 49 J. P. 294. See also *Cleverton* v. *St. Germans R. S. A.*, *supra.*

In *Att.-Gen.* v. *Lambeth Vestry* (1888), 4 T. L. R. 257, NORTH, J., restrained the defendants from promoting a Bill at the expense of the rates on the ground that they were a statutory body, and could not apply the rates for purposes outside those for which they were constituted. And in *Att.-Gen.* v. *Camberwell Vestry* (1895), 71 L. T. 478, NORTH, J., restrained the defendants from contributing out of the rates to the costs of legal proceedings for obtaining a declaration that a water company were not entitled to charge for supply to fixed baths.

As to opposing Bills to confirm Provisional Orders under the Railway and Canal Traffic Act, 1888, s. 24, see the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891, and s. 7 (2) of the Borough Funds Act, 1903, *post*, pp. 1854, 2033.

This Act applies, with modifications, to county councils. See the L. G. A., 1888, s. 15, and the County Councils (Bills in Parliament) Act, 1903.

Where a county surveyor attends the House of Commons by direction of and on behalf of his county council to give assistance as an expert witness in opposing a Bill before Parliament, such attendance is not within his ordinary duties and he is entitled to a special fee therefor in addition to his ordinary salary (*R.* v. *Newell*, [1911] 2 I. R. 535).

(*k*) This does not include Provisional Order Bills under the P. H. Acts, because, by s. 297 (8) of the P. H. A., 1875, *ante*, p. 626, every Act confirming a Provisional Order shall be deemed to be a public general Act. Hence the approval of the L. G. B. is not required for opposing any such Bill.

The Standing Orders of the House of Commons provide for local authorities having a *locus standi* to oppose lighting and water Bills affecting their own town or district (S. O. 134A).

(*l*) See *Att.-Gen.* v. *Tynemouth Corporation*, [1899] A. C. 293; 63 J. P. 404.

(*m*) This proviso is singularly expressed, but it is understood as preventing the application of this Act to any competing Bill. It may be stated that since the passing of this Act all private Bills to which it applies have contained a detailed statement in the preamble of these requirements, and the committees to which they are referred have to ascertain that due proof is given of this part of the preamble. It is also to be noticed that the Standing Orders of the House of Lords require that where it is proposed in any Bill that any local

that no powers contained in this clause shall apply in any case where the promotion or of opposition to a Bill by a governing body has been decided by a committee of either House of Parliament to be unreasonable or vexatious.

No payment to member of governing body to be so charged.

3. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such Bill shall be charged as aforesaid (*n*).

Costs of promoting or opposing Bills to require sanction of special meetings.

4. No expense in relation to promoting or opposing (*o*) any Bill or Bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such Board (*p*), and in respect of other matters, the approval of one of her Majesty's Secretaries of State (*q*), and in case of the promotion of a Bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the Bill in Parliament . . . (*r*).

authority shall be authorised to borrow money for sanitary purposes without the sanction of the L. G. B., estimates showing the proposed application for permanent work shall be recited therein and proved before the committee.

(*n*) See also s. 12 of the Municipal Corporations Act, 1882, and s. 46 of the L. G. A., 1894, *ante*, p. 1024.

The section, it will be seen, does not prevent councillors from being summoned and paid as witnesses.

(*o*) By s. 7 (1) of the Borough Funds Act, 1903, the provisions contained in this section that no expense in opposing a Bill in Parliament shall be charged unless the opposition has had the consent of the owners of the district shall cease to apply.

(*p*) The jurisdiction of the L. G. B. is considered to apply to all sanitary matters (including a gas undertaking under s. 161 of the P. H. A., 1875, *ante*, p. 362), and all highways and turnpike roads. In respect of all other matters not within the jurisdiction of that Board, reference must be made to the Secretary of State.

Memoranda of the L. G. B. as to the making of applications for the approval of the Board will be found in App. II., *post*, pp. 2192 *et seq.*

(*q*) Now the L. G. B., see s. 8 of the Borough Funds Act, 1903, *post*, p. 2033.

(*r*) The proviso to this section is repealed by s. 10 and the Schedule to the Borough Funds Act, 1903. It required the consent of owners and ratepayers to be obtained in manner provided by the L. G. A., 1858. The amending Act now requires the consent of the parochial electors obtained in manner thereby prescribed.

It is to be observed that this section does not take away the right under the Municipal Corporations Act, 1882, or under the general law applicable to trustees, which a municipal corporation has to defray out of the borough fund the expenses of any attack made by a Bill in Parliament, whether against their existence as a corporation or against their property, or only against their rights, powers, or privileges (*Att.-Gen.* v. *Brecon Corporation* (1879), 10 Ch. D. 204). But in *Leith Corporation* v. *Leith Harbour Commissioners*, [1899] A. C. 508, it was held that a municipal corporation is not entitled to charge upon the rates the costs incurred in opposition to a private Bill although such opposition is successful and the Bill would, if passed, have put an end to the separate existence of the corporation ; and in *Att.-Gen.* v. *Swansea Corporation*, [1898] 1 Ch. 602 ; 62 J. P. 408, it was held that an alteration in the price of gas in the district of a municipal corporation, which were large consumers, for public lighting, did not affect its rights, privileges, and duties within the principle of *Att.-Gen.* v. *Brecon Corporation*, *supra*, and the corporation not having complied with the requirements of s. 4 of this Act, were restrained at the instance of the gas company from applying any part of the borough fund of which there was no surplus in paying the costs of opposing a Bill promoted by the gas company for raising the price of

5. The approval of the Local Government Board . . . shall not be given to any such resolution as aforesaid, until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board . . . objecting to such approval. Proviso as to approval of Local Government Board, to any such resolution.

6. All costs, charges, and expenses incurred under the provisions of this Act shall before the same become chargeable, be examined and allowed by some person to be authorised . . . by the Local Government Board, as the case may be. Costs to be examined.

7. The Local Government Board . . . shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made (*s*). Power to direct local inquiry.

8. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act (*t*). Saving clause.

9. [*The one hundred and forty-second section of the Towns Improvement Clauses Act*, 1847, *is hereby repealed so far as the same is inconsistent with the provisions of this Act* (*u*).] Towns Improvement Clauses Act, 1849, s. 142, repealed.

10. The provisions of this Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by Provisional Order (*x*). Act not to extend to Bills if object attainable by Provisional Order.

11. This Act shall not extend or apply to Ireland or the city of London . . . (*y*). Extent.

gas. And see the cases cited in the notes to s. 2, *ante*, and *R.* v. *Norfolk Commissioners of Sewers* (1850), 15 Q. B. 549; *Att.-Gen.* v. *Wigan Corporation* (1854), 23 L. J. Ch. 429; 5 De G. M. & G. 52; *R.* v. *Marris* (1857), 5 W. R. 254; *R.* v. *Sheffield Corporation* (1871), L. R. 6 Q. B. 652; *S. C. sub nom. Roberts* v. *Sheffield Corporation*, 24 L. T. 659; 19 W. R. 1159; *Bower* v. *Sligo Commissioners* (1869), 4 Ir. C. L. R. 489; *Att.-Gen.* v. *Rickmansworth U. D. C.* (1902), 66 J. P. 410; 86 L. T. 521.

The court will not grant a *mandamus* to the mayor of a borough to hold a fresh meeting under this Act after a prior meeting has been held at which a poll was refused in order that at the fresh meeting a poll of the ratepayers might be taken, if the ratepayer applying for the *mandamus* is also one of the promoters of the Bill (*R.* v. *Peterborough Corporation* (1875), 44 L. J. Q. B. 85; 23 W. R. 343).

The L. G. B. have declared that all the preliminary consents, including the necessary resolutions of the parochial electors, must be obtained before the Board will give their approval, and they must be supplied with a statutory declaration by a competent person showing that all the statutory notices had been given and the requisite consents obtained.

(*s*) The section does not require that the person appointed to hold the inquiry should be an officer of the Board, and he cannot take evidence on oath. These inquiries are not governed by ss. 293—296 of the P. H. A., 1875, *ante*, pp. 622—625.

(*t*) See also saving for special Acts in s. 4 of the Borough Funds Act, 1903, *post*, p. 2032. And see *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601; 66 J. P. 293.

(*u*) Section 9 is now repealed by the S. L. R. A., 1883.

(*x*) The L. G. B. are required to report to Parliament on every local Bill relating to sanitary matters deposited in the offices prior to the meeting of Parliament, and hence they will not generally approve of any Bill which proposes to introduce into any local district provisions which can be obtained by a provisional order, nor will they approve of the introduction into a local Bill of provisions which the law of the land already supplies.

(*y*) This Act originally did not apply in the metropolis at all. It was, however, extended to the councils of metropolitan boroughs by s. 6 (6) of the L. G. A., 1899.

THE PAWNBROKERS ACT, 1872.

(35 & 36 VICT. c. 93.) (z)

An Act for consolidating, with amendments, the Acts relating to Pawnbrokers in Great Britain. [10th August 1872.]

PRELIMINARY.

Short title.

1. This Act may be cited as "The Pawnbrokers Act, 1872."

* * * * *

Effect of Schedules.

3. The Schedules to this Act, including the notes thereto, shall have effect as part of this Act (a).

* * * * *

DEFINITIONS; APPLICATION OF ACT.

Interpretation.

5. In this Act—

"Pawnbroker" includes every person who carries on the business of taking goods and chattels in pawn:

"Pledge" means an article pawned with a pawnbroker:

"Pawner" means a person delivering an article for pawn to a pawnbroker:

"Shop" includes dwelling-house and warehouse, or other place of business, or place where business is transacted:

"Unfinished goods or materials" includes any goods of any manufacture or of any part or branch of any manufacture either mixed or separate, or any materials whatever plainly intended for the composing or manufacturing of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith, and before the same are completed or finished for the purpose of wear or consumption:

"Constable" includes any peace officer:

"Justice" means justice of the peace having jurisdiction in the county or place where the matter requiring the cognizance of a justice arises.

Extension of Act to keepers of certain shops

6. In order to prevent evasion of the provisions of this Act, the following persons shall be deemed to be persons carrying on the business of taking goods and chattels in pawn (that is to say), every person who keeps a shop for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and who purchases or receives or takes in goods or chattels, and pays or advances or lends thereon any sum of money not exceeding ten pounds with or under an agreement or understanding expressed or implied or to be from the nature and character of the dealing reasonably inferred, that those goods or chattels may be afterwards redeemed or repurchased on any terms; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan respectively within this Act.

* * * * *

INLAND REVENUE LICENCES.

Yearly licence and excise duty.

37. Every pawnbroker shall yearly take out from the Commissioners of Inland Revenue an excise licence for carrying on his business, on which

(z) The duties of justices with reference to pawnbrokers' certificates under this Act are now transferred to district councils by the L. G. A., 1894, ss. 27, 32, *ante*, pp. 1009, 1013.

(a) The earlier part of this section was repealed by the S. L. R. (No. 2) A., 1893.

licence there shall be charged and paid for the use of her Majesty (*b*), an excise duty of seven pounds ten shillings.

Every licence shall be dated on the day on which it was issued and shall determine on the thirty-first day of July.

A separate licence shall be taken out and paid for by a pawnbroker for each pawnbroker's shop kept by him.

If a person acts as a pawnbroker without having in force a proper licence he shall for every such offence be liable to an excise penalty not exceeding fifty pounds.

All the provisions contained in any Act relating to excise licences, duties or penalties, and in force at the commencement of this Act, shall, as far as the same are applicable, have full effect with respect to the licence and duty and penalty aforesaid.

* * * * *

39. (*b*) A pawnbroker's licence shall not be granted to any person except on the production and in pursuance of the authority of a certificate granted under this Act; save that it shall not be necessary for any person being at the commencement of this Act a licensed pawnbroker, or for his executors, administrators, assigns, or successors, to obtain such a certificate (*c*). Licences not to be granted without certificate.

Any licence granted in contravention of this section shall be void.

40. Certificates under this Act shall be granted (as regards England) in the metropolitan police district by a magistrate sitting in any police court in the metropolis having jurisdiction in the district where the application is made, and in any place within the jurisdiction of a stipendiary magistrate by that magistrate, and in other places by the justices of the petty sessional division assembled at petty sessions specially convened for that purpose (*d*). Certificates to be granted by justices.

41. A certificate under this Act shall be in the form given in the Sixth Schedule to this Act, or to the like effect, and shall be in force for one year from this date. Form and duration of certificate.

42. A person intending to apply for the first time for a certificate under this Act shall proceed as follows: Notice of first application.

(1) Twenty-one days at least before the application he shall give notice by registered letter sent by post of his intention to one of the overseers of the poor of the parish or place in which he intends to carry on business, and to the superintendent of police of the district, and shall in the notice set forth his name and address:

(2) Within twenty-eight days before the application he shall cause a like notice to be affixed and maintained between ten o'clock in the morning and five o'clock in the afternoon of two consecutive Sundays, on the principal door or one of the doors of the church or chapel of the parish or place, or if there is none, then on some other public and conspicuous place in the parish or place.

43. An application for a certificate shall not be refused, except on the following grounds, or one of them: Grounds of refusal of certificate.

(1) That the applicant has failed to produce satisfactory evidence of good character;

(2) That the shop in which he intends to carry on the business of a pawn-

(*b*) Certain words are here repealed by the S. L. R. A., 1898.

(*c*) This exemption is not confined to the business actually carried on by a pawnbroker at the commencement of the Act. It extends to all pawnbrokers then licensed, their executors, assigns, or successors, who may open a new business on payment of the licence duty without any certificate (*R.* v. *Inland Revenue Commissioners*, [1891] 1 Q. B. 485; 55 J. P. 117. But the exemption only enables a successor to carry on without obtaining a certificate the actual business to which he succeeds, and does not enable him to open or carry on a new business merely upon payment of the licence duty (*R.* v. *Inland Revenue Commissioners, Ex parte Silvester*, [1907] 1 K. B. 108).

(*d*) Certificates are now granted by district councils; see note (*z*), *ante*, p. 1570.

broker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character;

(3) That he has not complied with the last preceding section.

Forgery of certificate.

44. If any person forges a certificate, or tenders a certificate knowing it to be forged, he shall, on conviction thereof in a court of summary jurisdiction, be liable to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment for any term not exceeding six months, with or without hard labour.

A licence granted in pursuance of a forged certificate shall be void; and if any person makes use of a forged certificate, knowing it to be forged, he shall be disqualified from obtaining at any time thereafter a pawnbroker's licence.

* * * * *

Appeal to quarter sessions.

52. If any person thinks himself aggrieved by any conviction or order of a court of summary jurisdiction under this Act, or by the refusal of a certificate for a licence, he may appeal therefrom, subject to the conditions and regulations following:

(1) The appeal shall be made to some court of general or quarter sessions (*e*) for the county or place in which the cause of appeal has arisen, held not less than fifteen days and (unless adjourned by the court) not more than four months after the decision or refusal appealed from:

(2) The appellant shall within seven days after the cause of appeal has arisen give notice to the other party and to the court or authority appealed from of his attention to appeal and the ground thereof:

(3) The appellant shall immediately after such notice enter into a recognizance before a justice with two sufficient sureties conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice allows:

(4) . . .

(5) The court of appeal may adjourn the appeal; and, upon the hearing thereof, they may confirm, reverse, or modify the decision or refusal appealed from, or remit the matter with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and may make such order as to costs to be paid by either party as the court thinks just.

* * * * *

SAVING.

Saving for local Acts.

57. Nothing in this Act shall repeal or in any manner interfere with the operation of any local or local and personal Act for the time being in force in any city, town, burgh, or other place.

* * * * *

[Sect. 41.]

THE SIXTH SCHEDULE (*f*).

FORMS OF CERTIFICATES OF MAGISTRATES AND JUSTICES.

I.—*England.*

I [*or* We] [*here insert description of the magistrate or justices*] do hereby certify that I [*or* we] do authorise the grant to *A. B.* of in the county of of a licence to carry on the business of a pawnbroker within the township of [*or* parish of *or other place as the case may be*].

Witness my hand [*or* our hands] this day of , 18 .

* * * * *

(*e*) The remainder of this section, though repealed by the S. J. A., 1884, so far as it related to appeals from convictions or orders of a court of summary jurisdiction, remains in full force as regards appeals from the refusal of a certificate for a licence. Paragraph (4) relating to release out of custody is, however, inapplicable and therefore omitted.

(*f*) See ss. 40, 41, and the notes thereto.

THE FAIRS ACT, 1873.

(36 & 37 VICT. c. 37.) (*g*)

An Act to amend the Law relating to Fairs in England and Wales.

[7th July 1873.]

1. This Act may be cited as "The Fairs Act, 1873." Short title.

2. This Act shall not extend to Scotland or Ireland. Extent.

3. In this Act the term "owner" means any person or persons or body of commissioners or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands or tenements, or under any charter, letters patent, or otherwise howsoever. Definition of terms.

4. [*Commencement of Act* (*repealed by the Statute Law Revision* (*No.* 2) *Act,* 1893 (56 *&* 57 *Vict. c.* 54)).]

5. [*The Fairs Act,* 1868 (31 *&* 32 *Vict. c.* 51), *repealed.*] (*h*)

6. In case it shall appear to a Secretary of State, upon representation duly made to him by the justices (*g*) acting in and for the petty sessional division within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be held in each year on some day or days other than that or those on which such fair is used to be held or on the day or days on which such fair is used to be held and any preceding or subsequent day or days or on or during a less number of days than those on which such fair is used to be held, it shall be lawful for a Secretary of State to order that such fair shall be held on such other day or days, or on the same day or days and any preceding or subsequent day or days, or on or during any less number of days as he shall think fit: Provided always, that notice of such representation and of the time when it shall please a Secretary of State to take the same into consideration shall if such representation shall have been made by justices (*i*) be given to the owner of such fair, and shall if such representation shall have been made by the owner of such fair be given to the clerk to the justices (*i*) acting in and for the petty sessional division within which such fair is held, and shall also be published once in the London Gazette, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered. Power to Secretary of State to alter days of holding fairs.

7. When and so soon as any such order as aforesaid shall have been made by a Secretary of State, notice of the making of the same shall be published in the London Gazette and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall only be held on the day or days mentioned in such order; and it shall be lawful for the owner of such fair to take all such toll or tolls, and to do all such act or acts, and to enjoy all and the same rights, powers, and privileges in respect thereof, and enforce the same by all and the like remedies, as if the same were held on the day or days upon which it was used to be held previous to the making of such order. Order of Secretary of State to be published in certain newspapers. All rights, etc. of owner to remain good.

(*g*) The powers and duties of justices under this Act are transferred to district councils by the L. G. A., 1894, ss. 27, 32, *ante*, pp. 1009, 1013. The sections and parts of sections repealed by the S. L. R. (No. 2) A., 1893, have been here omitted. See also 34 & 35 Vict. c. 12, *ante*, p. 1537.

(*h*) This section is in turn itself repealed by the S. L. R. A., 1883.

(*i*) See note (*g*), *supra*.

THE GAS AND WATER WORKS FACILITIES ACT, 1870, AMENDMENT ACT, 1873.

(36 & 37 VICT. c. 89.) (*j*)

An Act to extend and amend the provisions of the Gas and Water Works Facilities Act, 1870. [5th August 1873.]

Short title.

1. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870, Amendment Act, 1873" (*k*).

* * * * *

Power of Board of Trade to revoke, amend, extend, or vary Provisional Order. 33 & 34 Vict. c. 70.

12. Where under the Gas and Water Works Facilities Act, 1870, or this Act, the Board of Trade (*l*) have made any Provisional Order, they may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order.

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order.

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order.

Inquiries by the Board of Trade for purposes of 33 & 34 Vict. c. 70, and this Act.

13. Where, in relation to any application for a Provisional Order under the Gas and Water Works Facilities Act, 1870, or under this Act, it is in the opinion of the Board of Trade (*l*) expedient that an inquiry should be held, they may order and direct such inquiry to be held at such time and place as they may think proper, subject to the provisions following:

1. The inquiry shall be held in public before an officer or officers to be appointed in that behalf by the Board of Trade, hereinafter called the commissioner or commissioners:
2. Ten days notice at the least shall be given by the commissioner or commissioners of the time and place at which the inquiry is to be commenced:
3. The inquiry shall be commenced at the time and place so appointed, and the commissioner or commissioners may adjourn the inquiry from time to time as may be necessary to such time and place as he or they may think fit:
4. The commissioner or commissioners by summons shall, on the application of any party interested in the inquiry, require the attendance before him or them, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him or them, and every person summoned shall attend the commissioner or commissioners, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the commissioner or one of the commissioners for the purposes of the said inquiry shall, on summary conviction before two justices . . . be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or

(*j*) See the Gas and Water Works Facilities Act, 1870, *ante*, p. 1497. The clause of enactment of this Act has been repealed by the S. L. R. (No. 2) A., 1893.

(*k*) Sections 2—11 and the Schedule to this Act were repealed by the S. L. R. A., 1883.

(*l*) The L. G. B. are substituted for the Board of Trade so far as regards Provisional Orders for the supply of gas by an urban authority. See s. 161 of the P. H. A., 1875, *ante*, p. 362.

tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode :

5. The commissioner or commissioners shall make a report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

14. The Board of Trade (*m*) may from time to time make, and, when made may rescind, annul, or add to, rules with respect to the following matters (*n*) : Rules for carrying Acts into effect.

The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act ; and 33 & 34 Vict. c. 70.

As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

15. This Act shall not apply to any place within the metropolis as the same is defined in the Metropolis Management Act, 1855. Act not to extend to Metropolis. 18 & 19 Vict. c. 120.

* * * * *

THE EXPLOSIVES ACT, 1875.

(38 & 39 Vict. c. 17.)

An Act to amend the Law with respect to manufacturing, keeping, selling, carrying, and importing Gunpowder, Nitro-glycerine, and other Explosive Substances. [14th June 1875.]

1. This Act may be cited as "The Explosives Act, 1875." Short title.

* * * * *

37. The Secretary of State may from time to time make, and when made rescind, alter, or add to byelaws for regulating the conveyance, loading and unloading of gunpowder in any case in which byelaws made under any other provision of this Act do not apply, and in particular for declaring or regulating all or any of the following matters ; that is to say, Byelaws as to conveyance by road or otherwise, or loading of gunpowder.

1. Regulating the description and construction of carriages to be used in the conveyance of gunpowder as merchandise ; and

2. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive, or with any articles or substances, or in passenger carriages ; and

3. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one carriage ; and

4. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages used in such conveyance, and the

(*m*) See note (*l*) *ante*, p. 1574.

(*n*) See the General Order of the L. G. B., September 7th, 1891 (Stat. R. & O., *Rev.* 1904, VI., "Gas," p. 8).

time during which the gunpowder may be kept during such conveyance, loading, and unloading; and

5. Providing for the publication and supply of copies of the byelaws; and

6. Generally for protecting, whether by means similar to those abovementioned or not, persons or property from danger; and

7. Adapting on good cause being shown the byelaws in force under this section to the circumstances of any particular locality.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such byelaws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the breach continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage in respect of which, the breach of byelaw has taken place.

For the purpose of any mode of conveyance which is not a conveyance by land this section shall be construed as if ship and boat were included in the term "carriage."

* * * * *

39. Subject to the provisions hereafter in this Part of this Act contained, Part I. of this Act relating to gunpowder shall apply to every other description of explosive, in like manner as if those provisions were herein re-enacted with the substitution of that description of explosive for gunpowder.

ORDER OF SECRETARY OF STATE, No. 4 (*a*) DATED OCTOBER 28, 1904, RELATING TO THE DEPOSIT OF EXPLOSIVES FOR CONVEYANCE AS REFUSE.

Whereas by Part I. (Section 37) of the Explosives Act, 1875 (herein-after referred to as the Act) it is provided that a Secretary of State may from time to time make byelaws for regulating the conveyance, loading and unloading of gunpowder, in any case in which byelaws made under any other provision of the Act do not apply, and in particular for declaring or regulating all or any of the matters therein-after following:

And whereas by Part II. (Section 39) of the Act it is declared that, subject to the provisions subsequently in Part II. of the Act contained, Part I. of the Act relating to gunpowder shall apply to every other description of explosive in like manner as if the provisions of Part I. of the Act were re-enacted in Part II. with the substitution of that description of explosive for gunpowder:

And whereas it has been brought to my notice that danger to the public has been caused by the depositing of explosives in receptacles for refuse:

Now, therefore, in the exercise of the said power, I, one of His Majesty's Principal Secretaries of State, hereby order that the following byelaws shall be observed:—

1. Explosive shall not be deposited in any receptacle or place appropriated for refuse, and shall not be handed or forwarded to any dustman or other person employed in the removal of refuse, unless due notice has been given to such dustman or person, or to the dustman or person whose duty it is to remove refuse from such receptacle or place.

2. Explosive shall not be conveyed in any carriage or boat appropriated for the removal of refuse.

In the event of any breach (by any act or default) of the foregoing byelaws, or an attempt to commit such breach:—

The person committing the offence shall be liable to a penalty not exceeding in the case of the first offence, £10, and in the case of the second

offence, or any subsequent offence, £20, and also the following persons, viz., the owner of the carriage or boat in respect of which, or containing the explosive in respect of which, the offence is committed, the person in charge of such carriage, and the person owning such explosive, shall each be liable to a similar penalty unless he proves that he had supplied proper means and issued proper orders for the observance, and used due diligence to enforce the observance, of these byelaws.

A. AKERS-DOUGLAS.

Home Office, Whitehall,
28th October, 1904.

THE SALE OF FOOD AND DRUGS ACT, 1875.

(38 & 39 VICT. c. 63). (*o*)

An Act . . . to make better provision for the Sale of Food and Drugs in a pure state. [11th August 1875.]

1. [*Repeal.*] (*p*)

2. (*q*) . . . The term "drug" shall include medicine for internal or external use (*r*): Interpretation of words.

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough (*s*):

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England . . .

DESCRIPTION OF OFFENCES.

3. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health (*t*), with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the Mixing injurious ingredients with food.

(*o*) See the Amending Acts, 42 & 43 Vict. c. 30, and 62 & 63 Vict. c. 51, *post*, pp. 1691, 1965. Part of the title, and the preamble and clause of enactment of this Act have been repealed by the S. L. R. (No. 2) A., 1893.

(*p*) This section repealed previous Acts, and is now itself repealed by the S. L. R. A., 1883.

(*q*) The definition of "food" contained in this section is repealed by 62 & 63 Vict. c. 51, s. 27, and Schedule, *post*, pp. 1976, 1977. See now s. 26 of that Act, *post*, p. 1976, and notes thereto.

(*r*) Beeswax sold by a grocer is not a drug (*Fowle* v. *Fowle* (1896), 60 J. P. 758; 75 L. T. 514).

(*s*) And every liberty having a separate court of quarter sessions other than a cinque port (42 & 43 Vict. c. 30, s. 7, *post*, p. 1694).

(*t*) As to bottled peas coloured with three grains of sulphate of copper, see *Summers* v. *Grist* (1896), 60 J. P. 346; or with sulphate of copper in a harmless quantity, *Friend* v. *Mapp* (1904), 68 J. P. 589; 2 L. G. R. 1317. To justify a conviction under this section it must be found that the article of food has been rendered injurious to health by the admixture of the ingredient. A finding that the added ingredient is in itself injurious to health is insufficient. It is not, however, necessary that the analyst's certificate on which the proceedings under the section are founded should state that the article is injurious to health (*Hull* v. *Horsnell* (1904), 68 J. P. 591; 21 T. L. R. 32). An offence has been committed under the section if the article in question is injurious to the health of a substantial portion of the community, *e.g.*, of infants and invalids (*Cullen* v. *McNair* (1908), 72 J. P 376; 99 L. T. 358).

person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour (*u*).

Mixing drugs with injurious ingredients.

4. No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence (*u*).

Proof of absence of knowledge.

5. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Sale of articles of food and of drugs not of the proper nature, substance, and quality.

6. No person (*x*) shall sell to the prejudice of the purchaser (*y*) any article

(*u*) In the case of offences under these sections it is a defence to prove want of knowledge (*per* SMITH, J., in *Betts* v. *Armstead*, *infra*). See s. 5.

(*x*) H., who was a servant of the F. Dairies Company, and acting as such, sold milk containing 12 per cent. of added water :—*Held*, that he was properly convicted as the person selling (*Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181 ; 57 J. P. 775). But the employer is also responsible. The servant of B., in selling B.'s milk, mixed water with it contrary to the directions of B. :—*Held*, that B. was properly charged as the person selling, and that the question whether B. connived at the servant's act was only material for the purpose of determining the amount of the penalty (*Brown* v. *Foot* (1892), 61 L. J. M. C. 110 ; 56 J. P. 581). And see a similar case where a servant sold butter contrary to his master's directions, and where the master was convicted (*Houghton* v. *Mundy* (1910), 74 J. P. 377 ; 103 L. T. 60). If a servant fraudulently add water to milk which he is employed to sell, in order to increase the bulk, and appropriate the surplus price, and the milk is thereby damaged, he may be convicted of wilful damage under s. 52 of the Malicious Damage Act, 1861, although he has no malice towards or intention to injure his employer, the owner of the milk (*Roper* v. *Knott*, [1898] 1 Q. B. 868 ; 62 J. P. 375, overruling *Hall* v. *Richardson* (1890), 54 J. P. 345 ; 6 T. L. R. 71). The defendant employed his father to carry milk to a creamery under a contract by which he was to be paid according to the quality of the milk supplied. The father had no authority to sell to any one else, but in fact did sell to an inspector, who took proceedings against the defendant for selling adulterated milk to the prejudice of the creamery. It was held that the defendant should be convicted, and that the father's authority to sell was immaterial (*Keenan* v. *Costelloe* (1910), 44 Ir. L. T. 218). But in *Lindsay* v. *Dempster*, [1911] S. C. (J.) 110, a dairyman was prosecuted for selling, by the hand of his servant, milk which was not genuine, and it was proved that the servant who sold the milk had no authority to do so, his duty being merely to deliver the milk to his master's customers. It was held that as the servant had exceeded his authority in selling the milk there had been no sale by the accused, and that he must therefore be acquitted. The "complaint" must give fair notice to the accused that the sale in question was effected by his servant (*Wilson* v. *Fleming* (1913), 51 Sc. L. R. 72). A joint stock company incorporated under the Companies Acts can be convicted of an offence under this section (*Pearks, Gunston and Tee, Ltd.* v. *Ward ; Hennen* v. *Southern Counties Dairies Co.*, [1902] 2 K. B. 1 ; 66 J. P. 774). But see *Booth* v. *Helliwell* (1914), 78 J. P. N. 232.

(*y*) These words are an essential averment on a summons under the section (*R.* (*Sullivan*) v. *Clare County Court Judges* (1904), 38 I. L. T. 254 ; but see *Nimmo* v. *Lees*, [1910] S. C. (J.) 75). It is not now a defence that the article was purchased for analysis. See 42 & 43 Vict. c. 30, s. 2, *post*, p. 1691. As to sale of spirits, see s. 6 of the same Act, *post*, p. 1693. It is not necessary for an inspector to prove at the hearing that he is a duly authorised officer ; so held by CHANNELL and AVORY, JJ., in *Ross* v. *Helm* (1912), 77 J. P. 13 ; 107 L. T. 829. It is no defence that the article was purchased with money belonging to the authority (*Hoyle* v. *Hitchman* (1879), 4 Q. B. D. 233 ; 43 J. P. 430). When the seller of an article brings to the purchaser's knowledge the fact that the article sold to him is not of the nature, quality, or substance of the article which he demands, the sale is not to his prejudice within this section (*Sandys* v. *Small* (1878), 3 Q. B. D. 449 ; 42 J. P. 550) ; and he may purchase the article by an agent (*Horder* v. *Scott* (1880), 5 Q. B. D. 552 ; 44 J. P. 520 ; *Stace* v. *Smith* (1881), 45 J. P. 141 ; *Macaulay* v. *McKirdy* (1893), 20 Ct. of

of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser (*z*), under a penalty not exceeding

Sess. Cas. (4th ser.) (J. C.) 58; *Garforth* v. *Esam* (1892), 56 J. P. 521; *Massey* v. *Kelso* (1903), 4 F. (Just. Cas.) 73. See 67 J. P. 111). Thus, in *Bundy* v. *Lewis* (1908), 72 J. P. 489; 99 L. T. 833, the servant of the respondent, who was a chemist, was asked by the appellant for paregoric, and sold him a substance deficient in alcohol and opium accor d ing to the formula given in the British Pharmacopœia. The substance was labelled "Poison" after the word "Paregoric," but the word "poison" had been struck out in pencil and the word "substitute" added. It was held that on the facts there was no sale to the prejudice of the purchaser. See also *Gage* v. *Elsey*, *post*, p. 1581; *Collett* v. *Walker* (1895), 64 L. J. M. C. 267; 59 J. P. 600; *Palmer* v. *Tyler* (1897), 61 J. P. 389); *Sandys* v. *Rhodes* (1903), 67 J. P. 352. Where a purchaser has notice that the article is mixed with an ingredient, though he is not told the exact nature or effect of that ingredient, and chooses to buy the article so mixed, the sale is not to his prejudice within the meaning of the section (*Williams* v. *Friend*, [1912] 2 K. B. 471; 76 J. P. 301). A sale may be to the prejudice of the purchaser within this section although the purchaser had special knowledge not derived from information given by the seller that the article sold was not of the nature, substance and quality demanded by him. The test is, whether the sale would have been to the prejudice of a purchaser who had not that special knowledge (*Pearks, Gunston and Tee, Ltd.* v. *Ward*, *supra*). It is not to the prejudice of the purchaser if he asks for part of the contents of a particular vessel and is served with what he asks for, although the contents are adulterated. So where an inspector asked for a sample from a particular churn of milk without saying that it was milk he required, the sale was held not to constitute an offence although the contents of the churn were adulterated (*Sandys* v. *Jackson* (1905), 69 J. P. 171; 92 L. T. 646).

"Demerara sugar" is a generic term referring to a process and not a place (*Anderson* v. *Britcher* (1913), 78 J. P. 65; 30 T. L. R. 78).

(*z*) Proof of *mens rea* is not necessary. See *Fitzpatrick* v. *Kelly* (1873), L. R. 8 Q. B. 337; *Mullins* v. *Collins* (1874), L. R. 9 Q. B. 292; *Roberts* v. *Egerton* (1874), *ibid.* 494. The provisions of the Bread Act, 1836, as to using alum in the manufacture of bread, may be referred to and compared with the text; also the cases decided on that Act (*R.* v. *Dixon* (1814), 3 M. & S. 11; *Core* v. *James* (1872), L. R. 7 Q. B. 135; 35 J. P. 740). It has now been decided that an offence against this section is committed, although the seller did not know that the article sold was not of the nature, substance and quality demanded (*Betts* v. *Armstead* (1888), 20 Q. B. D. 771; 52 J. P. 741). And see *Pain* v. *Boughtwood* (1890), 24 Q. B. D. 353; 54 J. P. 469; *Brown* v. *Foot*, and *Houghton* v. *Mundy*, *supra*; *Roper* v. *Knott*, [1898] 1 Q. B. 868; 62 J. P. 375, overruling *Hall* v. *Richardson* (1890), 54 J. P. 345; 6 T. L. R. 71; *R.* v. *Field* (1895), 64 L. J. M. C. 158; 11 T. L. R. 240; *Parker* v. *Alder*, [1899] 1 Q. B. 20; 62 J. P. 772. And *cf.* *Kearley* v. *Tyler*, cited in the note to s. 8, *post*, p. 1582.

Where no standard of purity has been fixed by regulation, *e.g.*, brandy, the question whether the article supplied is of the nature, quality and substance demanded is one of fact to be decided on the evidence (*Wilson and McPhee* v. *Wilson* (1905), 6 F. (Just. Cas.) 10). And see *Rudd* v. *Skelton Co-operative Society, Ltd.*, *infra*.

Lard adulterated with 15 per cent. of water is not the article demanded by a purchaser who asks for lard (*Rook* v. *Hopley*, *post*, p. 1589). In the case of "lardine" which is a substitute for lard, and for which there is no statutory standard, it is a fact for the justices to determine whether the article is adulterated or not,—so held by Lord Alverstone, C.J., and Ridley, J. (Bray, J., *dissentiente*), in *Rudd* v. *Skelton Co-operative Society, Ltd.* (1911), 75 J. P. 326; 104 L. T. 919. See also *Preston* v. *Redfern* (1912), 76 J. P. 359; 107 L. T. 410. Where the purchaser asked for cream, and was supplied with cream at one penny per gill, which was found on analysis to have been diluted with 34 per cent. of skimmed milk, and it was proved that the seller had for sale a superior quality of cream diluted with less skimmed milk, which he sold at a higher price, it was held that the seller had not committed an offence in selling the inferior cream at a lower price (*Morton* v. *Green* (1881), 8 Ct. of Sess. Cas. (4th ser.) 36).

Where the only evidence was the report of the public analyst that milk had been diluted with 27 per cent. of added water, and the magistrate dismissed the charge, the court refused to interfere, expressing the opinion that the magistrate was not bound to convict unless he was satisfied in the whole circumstances of the case that the article was not of the nature, quality and substance demanded (*Macleod* v. *O'Neill* (1882), 9 Ct. of Sess. Cas. (4th ser.) (J. C.), 32). This decision is apparently contrary to that in *Harrison* v. *Richards* (1881), 45 J. P. 552, which was followed in *Elder* v. *Dryden* (1908), 72 J. P. 355; 99 L. T. 20. An inspector who asked for "milk" was supplied with skimmed milk, which, by reason of being skimmed, was deficient in butter fat:—*Held*, that no offence had been committed under this section (*Lane* v. *Collins* (1885), 14 Q. B. D. 93; 49 J. P. 89). But see as to condensed skimmed milk, the Sale of Food and Drugs Act, 1899, ss. 1 (1) (c), and 11, *post*, pp. 1965, 1971. Milk taken direct from the cow

twenty pounds (*a*): Provided that an offence (*b*) shall not be deemed to be committed under this section in the following cases; that is to say,

(1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof (*c*);

and not tampered with or adulterated, but which, in consequence of the time which has elapsed since the cow has last been milked, has become deficient in fat to the extent of 30 per cent., is not of the nature, substance and quality of the article demanded by a purchaser who demands new milk (*Smithies* v. *Bridge*, [1902] 2 K. B. 13; 66 J. P. 740). The decision in this case was criticised, and the dissenting judgment of DARLING, J., concurred in, in *Scott* v. *Jack*, [1912] S. C. (J.) 37, where a farmer was charged with selling milk which was not genuine, in that it did not contain the quantity of milk fat and solids required by the Sale of Milk Regulations, 1901; it was proved that the milk had not been tampered with after being taken from the cow, but that the deficiency of quality was due to the method in which the cows were fed. The accused was acquitted, and on appeal it was held that the acquittal was right. If under similar circumstances the deficiency in milk fat is not so large, the vendor need not be convicted, though the 3 per cent. prescribed by the Sale of Milk Regulations, 1901, is not present (*Wolfenden* v. *McCulloch* (1905), 69 J. P. 228; 92 L. T. 857; *O'Driscoll* v. *Dolan* (1911), 45 Ir. L. T. 144). But see *Marshall* v. *Skett* (1913), 108 L. T. 1001; 77 J. P. 173, in which the defence was raised that the milk in question came straight from the cow, but the case was sent back to the magistrates to convict unless there was further evidence given before them that the difference in the quantity of fat in two consignments of milk from the same cows was consistent with there having been ordinary milking. Where an excess of water in butter was proved to be due to the butter having been kept in water at a time of great heat, and the magistrate held that no offence was committed inasmuch as the water was not added fraudulently, at Divisional Court *held* that fraud is not a necessary ingredient to the offence (*Hutchinson* v. *Curran* (1905), 40 I. L. T. 22).

Butter made in the ordinary way and afterwards mixed with milk, for the purpose of increasing its weight, by a process having the effect of retaining the water in the milk so as to cause an excessive quantity of water in the butter is not the article demanded by a purchaser who asks for butter (*Pearks, Gunston and Tee, Ltd.* v. *Knight*, [1901] 2 K. B. 825; 65 J. P. 822); and see now as to the sale of milk-blended butter, the provisions of the Butter and Margarine Act, 1907, *post*, p. 2072. As to margarine, the fact that the article sold is margarine as defined by the Margarine Act, 1887, *post*, p. 1900, does not preclude a conviction if it is not genuine margarine (*Roberts* v. *Leeming* (1905), 69 J. P. 417; 3 L. G. R. 1031). As to the dilution of beer with beer of inferior quality, see *Crofts* v. *Taylor* (1887), 3 T. L. R. 844; and as to arsenic in beer, see *Goulder* v. *Rook*, [1901] 2 K. B. 290; 65 J. P. 646; and as to glucose in marmalade, *Smith* v. *Wisden* (1902), 66 J. P. 150; 85 L. T. 760; *Wilson* v. *McCutcheon* (1903), 40 Sc. L. R. 31. See 67 J. P. 361. The section applies not only to sales of adulterated articles, but also to cases where the article sold is not adulterated, but wholly different from that demanded, for example, when savin is delivered for saffron (*Knight* v. *Bowers* (1885), 14 Q. B. D. 845; 49 J. P. 614). A false representation as to the quality of the goods is no offence, provided that a true one is made before the sale actually takes place (*Kirk* v. *Coates* (1886), 16 Q. B. D. 49; 50 J. P. 148. And see *Frew* v. *Gunning* (1902), 3 F. (Just. Cas.) 51). But if a false representation is made at the time of the sale, it is immaterial that the purchaser must have known from the price that the representation was false (*Heywood* v. *Whitehead* (1896), 76 L. T. 781). Upon a summons alleging an offence against this section, the defendant may be convicted, although the facts show a seizure under s. 3 of 42 & 43 Vict. c. 30, *post*, p. 1692, if he does not apply for an amendment or adjournment under s. 1 of the Summary Jurisdiction Act, 1848 (*Hiett* v. *Ward* (1894), 58 J. P. 461; 70 L. T. (N.S.) 374).

(*a*) For the second or any subsequent offence an increased penalty may be imposed. See 62 & 63 Vict. c. 51, s. 17, *post*, p. 1972. As to trifling offences, see the Probation of Offenders Act, 1907, s. 1; *R.* v. *Field* (1895), 64 L. J. M. C. 158; 11 T. L. R. 240; *Banks* v. *Wooler* (1900), 64 J. P. 245; 81 L. T. 785; *Preston* v. *Redfern*, *ante*, p. 1579.

In a summons under this section the time and place of the sale constituting the offence charged must be specified (*Lindsay* v. *Low & Co.* (1903), 4 F. (Just. Cas.) 45). The summons should specifically state what was the article demanded, as well as what was the article sold (*Hamilton* v. *Morrison* (1903), 40 Sc. L. R. 573. See 67 J. P. 362).

(*b*) See *Telford* v. *Fyfe*, [1908] S. C. (J.) 83.

(*c*) Mustard mixed with flour and turmeric not sold as pure mustard was held not to be within the corresponding provisions of a former Act (*Pope* v. *Tearle* (1874), L. R. 9 C. P. 499); but *quære*, if mustard simply had been asked for. See *Sandys* v. *Markham* (1877)

(2) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;
(3) Where the food or drug is compounded as in this Act mentioned (*d*);
(4) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation (*e*).

Compound articles of food and compounded drugs.

7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds (*f*).

Protection from offences by giving label.

8. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed (*g*).

41 J. P. 52. See also *Horder* v. *Grainger* (1880), 44 J. P. 488; *Goldsmith* v. *Maddaford* (1882), 46 J. P. 44. Where a drug is asked for which is included in the British Pharmacopœia, it must be supplied as therein described (*White* v. *Bywater* (1887), 19 Q. B. D. 582; 51 J. P. 821; *Dickins* v. *Randerson*, [1901] 1 Q. B. 437; 65 J. P. 262). But evidence may be tendered that there is a commercial standard of the article differing from that prescribed by the British Pharmacopœia (*Boots Cash Chemists* v. *Cowling* (1903), 67 J. P. 195; 88 L. T. 539). Where the British Pharmacopœia gave a formula, but without fixing a standard as to the amounts of ingredients, the sale of a drug containing less of a particular ingredient than if prepared according to the formula is no offence unless it be shown that the deficiency impaired the efficacy of the drug (*Hudson* v. *Bridge* (1903), 67 J. P. 186; 88 L. T. 550).

(*d*) This referred to a clause which was dropped out of the Bill. Proceedings may properly be taken under this section against a person who sells to the prejudice of the purchaser a compounded drug not of the nature, substance or quality demanded by him (*Beardsley* v. *Walton*, [1900] 2 Q. B. 1; 64 J. P. 436). See also *Houghton* v. *Taplin* (1897), 13 T. L. R. 386. On asking for a compounded drug, which is one of the medicines mentioned in the British Pharmacopœia, the purchaser must be taken to have demanded that it should be compounded of the proportions therein prescribed. See *White* v. *Bywater* and *Dickins* v. *Randerson*, *supra*.

(*e*) See *per* BLACKBURN, J., in *Roberts* v. *Egerton* (1874), L. R. 9 Q. B. 494. It was held that this sub-section protected a person who sold buttermilk mixed with water, as water was necessarily added in the process of manufacture (*Warnock* v. *Johnstone* (1881), 8 Ct. of Sess. Cas. (4th ser.) 55). The appellant sold butter in which was found 21½ per cent. of water, and the justices convicted him. The case did not state, however, that the water was fraudulently added within sub-s. (1), or that the butter was unavoidably mixed with water under sub-s. (4). The court remitted the case for further findings on these points, and intimated that if the water was unavoidably added, a conviction should not follow (*Bosomworth* v. *Bridge* (1892), 91 L. T. (N.S.) 180; 36 Sol. J. 594).

(*f*) For the second or any subsequent offence, an increased penalty may be imposed. See the Sale of Food and Drugs Act, 1899, s. 17, *post*, p. 1972.

(*g*) As to what is meant by "distinctly and legibly written or printed," see the Sale of Food and Drugs Act, 1899, s. 12, *post*, p. 1971. Where a label was used stating that an article purchased as coffee was a mixture of coffee and chicory, on analysis the coffee was only 60 per cent., and the justices found that the chicory was used fraudulently to increase the bulk, the court held that they were right (*Liddiard* v. *Reece* (1880), 44 J. P. 233). The magistrate must find whether the chicory is fraudulently intended to increase the bulk, and, if he so finds, he must convict (*Horder* v. *Meddings* (1880), 44 J. P. 234), and the existence of a label will not protect the seller (*Star Tea Co.* v. *Neale* (1909), 73 J. P. 511; 8 L. G. R. 5). But if he does not so find and convicts, the conviction will be quashed (*Otter* v. *Edgley* (1893), 57 J. P. 457). A sale of a mixture represented to be of coffee and chicory when there was only 30 per cent. of coffee, was held not to be an offence in *Higgins* v. *Hall* (1887), 51 J. P. 293. Where there is no evidence of fraud, the label is sufficient, although the type in which it is printed is so small as to require a magnifying glass for reading it (*Attfield* v. *Tyler* (1893), 57 J. P. 357). Notice may be given verbally at the time of sale as well as by label (*Gage* v. *Elsey* (1883), 10 Q. B. D. 518; 47 J. P. 391); and see *Sandys* v. *Small*, *Palmer* v. *Tyler*, *Bundy* v. *Lewis*, *ante*, pp. 1578, 1579; *Hayes* v. *Rule* (1903), 66 J. P. 661; 87 L. T. 133. It is sufficient to give notice

Abstraction of part of an article of food before sale.

9. No person shall, with the intent that the same may be sold in its altered state without notice abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds (*h*).

that an article is mixed without stating the ingredients or proportions. See *Pope* v. *Tearle* (1874), L. R. 9 C. P. 499; *Goldsmith* v. *Maddaford* (1884), 46 J. P. 44; *Williams* v. *Friend*, *ante*, p. 1579. It is a necessary part of the defence allowed by the section to prove that the person selling brought to the mind of the purchaser the fact that there was on the article a label of the kind referred to in the section,—So held by AVORY, ROWLATT, and SHEARMAN, JJ., in *Batchelour* v. *Gee* (1914), 30 T. L. R. 506, thereby dissenting from *Jones* v. *Jones* (1894), 58 J. P. 653; 10 T. L. R. 300. A notice on an inside wrapper might not be sufficient, but if there be sufficient notice also displayed in the shop the vendor is protected though the purchaser's attention was not called to it (*Pearks, Gunston and Tee, Ltd.* v. *Houghton*, [1902] 1 K. B. 889; 66 J. P. 422). The shopman of K., in selling lard, wrapped it in the wrong wrapper, owing to the shop being crowded, the wrapper representing the lard to be margarine instead of lard compound :—*Held*, that K. was entitled to give evidence that the shopman acted under mistake, and contrary to his orders, in placing the lard in a margarine wrapper (*Kearley* v. *Tyler* (or *Tonge*) (1892), 60 L. J. M. C. 159; 56 J. P. 72). Notice that milk sold was not guaranteed 3 per cent., meaning that it did not contain 3 per cent. of milk fat according to the standard prescribed by the Sale of Milk Regulations, 1901, is not sufficient notice that it is not pure milk (*Souter* v. *Lean* (1905), 6 F. (J. C.) 20).

T. went into J.'s public-house, and without going into the bar or kitchen, went into a club-room and asked for whisky, and that supplied was 37 degrees under proof. A notice that "all spirits sold are diluted" was stuck up in the bar and kitchen, but not in the club-room, and nothing was said to T. on delivery :—*Held*, that the justices ought to have inquired before deciding the case whether T. knew that the practice at J.'s house was to sell only diluted spirits, in which case no conviction was proper (*Morris* v. *Johnson* (1890), 54 J. P. 612; 6 T. L. R. 171). A publican being asked for rum, said he had two qualities, one at 1*s.* and the other at 1*s.* 2*d.*, and the quality at 1*s.* was supplied and found to be 38 degrees under proof. A notice was stuck up in the house that "all spirits sold here are diluted in accordance with the new excise regulations" :—*Held*, that this was not in itself a protection, but the justices ought to determine whether the purchaser was prejudiced (*Morris* v. *Askew* (1893), 57 J. P. 724). A notice exhibited by an innkeeper that "All spirits sold in this establishment, in order to comply with the Food and Drugs Act, will not be of any guaranteed strength," is not sufficient to bring to the mind of the purchaser the fact that the spirits sold are diluted to a strength below the standard provided by s. 6 of the Sale of Food and Drugs Act Amendment Act, 1879 (*Dawes* v. *Wilkinson*, [1907] 1 K. B. 278; 71 J. P. 23).

As to a general warranty and its effect on a particular consignment delivered thereunder, see *Evans* v. *Weatheritt*, *post*, p. 1590.

(*h*) Increased penalties may be awarded for the second or any subsequent offence. See the Sale of Food and Drugs Act, 1899, s. 17, *post*, p. 1972. A person selling the altered article may be convicted, although at the time of the sale he did not know of the alteration (*Pain* v. *Boughtwood*, *ante*, p. 1579; *Spiers and Pond* v. *Bennett*, *infra*). The words "so altered" refer to a physical alteration of the article, irrespective of the intent with which the alteration is made. The respondent, a retail milk-seller, poured into a pail eight barn gallons of unskimmed milk, which she sold therefrom in small quantities to her customers, dipping it out of the pail from time to time with a measure. The sale of the contents of the pail extended over a space of between four and five hours, during the whole of which time, owing to the neglect of the respondent to keep the milk stirred, the cream was continually rising to the surface. When not more than two quarts remained in the pail, the appellant purchased from the respondent a pint of milk, which was served to him from the pail, and which, upon analysis, showed a deficiency of 33 per cent. of fatty matter. The respondent did not disclose the deficiency to the appellant. The deficiency was entirely due to the manner in which the earlier customers had been served :—*Held*, that the respondent, in so selling the milk to the appellant without disclosing its condition, was guilty of an offence against the above section (*Dyke* v. *Gower*, [1892] 1 Q. B. 220; 56 J. P. 168). See further upon this section, with reference to separate offences in respect to different samples of milk taken at the same time, *Fecitt* v. *Walsh*, the facts of which are set out in the notes to 42 & 43 Vict. c. 30, s. 3, *post*, p. 1693. The servant of C., a dairyman, being short in his supply of milk, bought two gallons from another dairyman, and mixed it with his own, and sold it to customers. Upon a charge against C. under the above section, it was held that though neither C. nor his servant knew that the bought milk was adulterated, this was no defence (*Morris* v. *Corbett* (1892), 56 J. P. 649). On a sale of condensed milk in a tin where there was a label on the tin stating that it contained con-

APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

10. In the city of London and the liberties thereof the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may (*i*), as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience (*k*), as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analyst such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place (*l*). Appointment of analyst.

. . . . .

11. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act. Town council may engage the analyst of another borough or of the county.

12. Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the Power to purchaser of article of food to have it analysed.

densed milk, and, in smaller print, that it contained skimmed milk, this was held a sufficient disclosure of the alteration (*Jones* v. *Davies* (1893), 57 J. P. 808; 62 L. T. 497). See also *Morgan* v. *Auger* (1902), Times, March 14th; *Platt* v. *Tyler* (1894), 58 J. P. 71. As to condensed skimmed milk, see now the Sale of Food and Drugs Act, 1899, s. 11, *post*, p. 1971. Apart from that section, the question whether there has been sufficient disclosure is a question of fact for the justices (*Petchey* v. *Taylor* (1898), 62 J. P. 260; 78 L. T. 501). But in *Spiers and Pond* v. *Bennett*, [1896] 2 Q. B. 65; 60 J. P. 437, the court reversed the decision of the justices as in *Jones* v. *Davies*, *supra*, apparently on the ground that there was no evidence on which they could find as they did.

(*i*) As to enforcing the appointment, see the Sale of Food and Drugs Act, 1899, s. 3, *post*, p. 1967.

(*k*) As to proof of competency, see the Sale of Food and Drugs Act, 1899, s. 3 (5), *post*, p. 1967.

(*l*) The remainder of this section related solely to Scotland and Ireland, and is therefore omitted. The powers of the quarter sessions under this section are now transferred to the county council by the L. G. A., 1888, s. 3 (x). The powers of the smaller boroughs are also transferred to the same body by ss. 38, 39 of that Act, *ante*, pp. 763, 765. A local authority not authorised under these enactments to appoint an analyst, may nevertheless, by their inspector of nuisances, institute prosecutions under this Act (*Worthington* v. *Kyme* (1905), 69 J. P. 390; 93 L. T. 546).

analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis (*m*).

Officer named to obtain a sample of food or drug to submit to analyst.

13. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place; and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis (*n*).

Provision for dealing with the sample when purchased.

14. The person purchasing (*o*) any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith (*p*) notify to the seller or his agent (*q*) selling the article his intention

(*m*) Officers of the L. G. B. and the Board of Agriculture may institute proceedings as private individuals under this Act. They are not limited in prosecutions at their instance to cases contemplated by the Act of 1899 (*Falconer* v. *Whyte*, [1908] S. C. (J.) 40).

(*n*) An authorised officer may act under this section by an agent (*Farley* v. *Higginbotham* (1898), 104 L. T. Newsp. 410; 42 Sol. J. 309). As to obtaining samples of milk, see 42 & 43 Vict. c. 30, s. 3, *post*, p. 1692. In *Johnston* v. *Smith*, Times, June 9th, 1894, an action was brought against an analyst for negligence in giving a wrong certificate, but the jury found for the defendant.

(*o*) Or his agent (*Horder* v. *Scott*, *ante*, p. 1579; *Macaulay* v. *McKirdy* (1893), 20 Ct. of Sess. Cas. (4th ser.) (J. C.) 58). Where a sanitary inspector purchased by his agent, and then himself entered the shop and gave notice, etc. under this section, it was held that this was a sufficient compliance with the Act (*Stace* v. *Smith* (1881), 45 J. P. 141; *Massey* v. *Kelso* (1903), 4 F. (Just. Cas.) 73. See 67 J. P. 111). An inspector sent his servant into a public-house to purchase a bottle of gin. When the servant had been in the house a minute, and had paid for the gin, the inspector entered:—*Held*, the inspector was the purchaser (*Garforth* v. *Esam* (1892), 56 J. P. 521; 8 T. L. R. 243. And see *Somerset* v. *Miller*, *infra*). If a sample is submitted to the public analyst by an assistant inspector, it is nevertheless open to the inspector to institute proceedings himself and in his own name (*Tyler* v. *Dairy Supply Co., Ltd.* (1908) 72 J. P. 132; 98 L. T. 867). It was formerly held that the provisions of this section applied to a purchase by a private person as well as to a purchase by a public officer (*Parsons* v. *Birmingham Dairy Co.* (1882), 9 Q. B. D. 172; 46 J. P. 727). This decision was dissented from in *Enniskillen Guardians* v. *Hilliard* (1884), 14 L. R. Ir. 214, where it was held that the provisions of the section do not apply to the purchase of an article unless for analysis, and therefore it is not a condition precedent to the right of a purchaser for consumption to take proceedings for a penalty under the Act, that he should have given to the seller the notification required by the section. And the Irish case has now been approved and followed in preference to the English one in the case of *Buckler* v. *Wilson*, [1896] 1 Q. B. 83; 60 J. P. 118. D. purchased from the appellant a pint of milk, and after the purchase was completed told the vendor that he intended to have the milk analysed, and offered to divide it with the vendor, which offer was refused:—*Held*, that the provisions of the sections had been sufficiently complied with (*Chappell* v. *Emson* (1884), 48 J. P. 200).

(*p*) An inspector, standing outside, sent a constable into the inn of M. to buy gin, and after the constable came out both went inside two minutes later and told M. that the purchase was for analysis, and divided it:—*Held*, that there had been a notification forthwith to satisfy this section (*Somerset* v. *Miller* (1890), 54 J. P. 614).

(*q*) A railway porter delivering milk on arrival at a railway station is not the vendor's agent. See *Rouch* v. *Hall*, *infra*.

H., a milk contractor, had contracted to deliver daily to W. a certain quantity of milk. One morning, J., a servant of H., drove up with the milk and delivered it from a van. P., acting on instructions from W., took a sample from one churn, which he placed in three bottles, and he gave one bottle to J., stating that the others were to be sent to the public analyst:—*Held*, that J. was not an agent of H. within the above section, and that the above section did not apply to such a case, the proper procedure being under s. 3 of the Act of 1879, *post*, p. 1692 (*Harris* v. *Williams* (1889), 6 T. L. R. 47).

It is not necessary to notify to the agent who sold the article (*Davies* v. *Burrell*, [1912] 2 K. B. 243; 76 J. P. 285).

to have the same analysed by the public analyst (*r*), and shall (*s*) divide the article into three parts to be then and there separated, and each part to be marked (*t*) and sealed or fastened up in such manner as its nature will permit (*u*), and shall, if required to do so, deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison (*x*), and submit the third part, if he deems it right to have the article analysed, to the analyst (*y*).

15. [*Provision when sample is not divided.*] (*z*)

Provision for sending article to the analyst through the post office.

16. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter (*a*), subject to any

(*r*) It is not enough to notify that the article is for analysis simply (*Barnes* v. *Chipp*, (1878), 3 Ex. D. 176). Notice must be given that the analysis is to be by the public analyst; but notice of analysis by the "county analyst" was held sufficient in *Wheeker* v. *Webb* (1887), 51 J. P. 661. This section need not be complied with in case of a purchase of milk under the Sale of Food and Drugs Act Amendment Act, 1879, *post*, p. 1691 (*Rouch* v. *Hall* (1880), 6 Q. B. D. 17; 45 J. P. 220; *Rolfe* v. *Thompson*, [1892] 2 Q. B. 196; 56 J. P. 465), nor is it necessary to observe the formalities of this section on the taking of a sample under the Butter and Margarine Act, 1907, s. 2, nor is the observance of these formalities a condition precedent to proceedings under s. 3 of that Act (*Monro* v. *Central Creamery Co., Ltd.*, [1912] 1 K. B. 579; 76 J. P. 131). And see *Chappell* v. *Emson*, *ante*, p. 1584. But in all other cases the notification under this section and the subsequent analysis are conditions precedent to a prosecution even if the seller at the time of purchase has admitted the commission of an offence against the Act (*Smart* v. *Watts*, [1895] 1 Q. B. 219).

(*s*) The words "offer to" were here repealed by the Sale of Food and Drugs Act, 1899, ss. 13, 27, and Schedule, *post*, pp. 1972, 1976, thereby making division compulsory in all cases, and, consequently, certain other words following the words "if required to do so" and the whole of s. 15 were also repealed. The clause is printed as amended. If three or more separate parcels of an article are purchased, as, for instance, several bottles of camphorated oil, each must be divided, and it is not enough, on request, to deliver one of such parcels back to the seller (*Mason* v. *Cowdary*, [1900] 2 Q. B. 419; 64 J. P. 662. But this case was distinguished in *Smith* v. *Savage*, [1905] 2 K. B. 88; 69 J. P. 245, where four penny packets of cream of tartar were purchased and mixed together by the purchaser in the presence of the vendor, and then divided into three parts). Each of the three parts must be sufficient to afford a reasonable quantity for the purposes of analysis (*Lowery* v. *Hallard*, [1906] 1 K. B. 398; 70 J. P. 57).

(*t*) A sample was found to bear the date of the day preceding the day of the alleged offence. It was held that the date was affixed to the sample for purposes of identification, and that this was a question of fact which could not be re-opened (*Howe* v. *Knowles*, [1909] S. C. (J.) 61).

(*u*) Thus, the wrapping up of the three parts of a certain quantity of butter in grease-proof paper was held sufficient, although the analyst certified that in consequence of the butter having been so fastened up it was probable that there had been considerable loss of water since the date of the purchase (*Pearks, Gunston and Tee, Ltd.* v. *Ward*, [1902] 2 K. B. 1; 66 J. P. 774).

(*x*) The part to be retained is intended for future comparison and to be produced at the hearing under s. 21, *post*, p. 1588, but it need not necessarily be this part that is to be sent for analysis under s. 22. See *Suckling* v. *Parker*, [1906] 1 K. B. 527; 70 J. P. 209.

(*y*) The analyst's certificate must be obtained by every prosecutor, whether private or official. Thus, if a retail seller of milk is convicted of selling adulterated milk, it is not sufficient if he use only the certificate used in the prosecution against himself, when taking proceedings against the wholesale dealer from whom he purchased the milk in question (*R.* (*Barry*) v. *Mahoney*, [1909] 2 I. R. 490).

(*z*) This section is now repealed by the Sale of Food and Drugs Act, 1899, s. 27, and Schedule, *post*, p. 1976. See note (*s*), *supra*.

(*a*) The words "registered parcel" are now to be substituted for the words "registered letter" in the above section (62 & 63 Vict. c. 51, s. 15, *post*, p. 1972). There do not appear to be any special regulations of the Postmaster-General now in force under this section, but the ordinary regulations as set out in the Post Office Guide are applicable.

A. supplied butter to a workhouse, the master of which made up a sample of about half a pound of the butter, marked it "butter" and caused it to be sent to the public analyst by post, but not by registered post. On the following day the public analyst received a package purporting to come from the workhouse master and marked "butter" and

regulations which the Postmaster-General may make in reference to the carrying and delivery of such article; and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Person refusing to sell any article to any officer liable to penalty.

17. If any such officer, inspector, or constable as above described, shall apply to purchase any article of food or any drug exposed for sale, or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds (*b*).

Form of the certificate.

18. The certificate of the analysis shall (*c*) be in the form set forth in the Schedule hereto, or to the like effect.

containing about six fluid ounces. The analyst's certificate stated that he had received the sample from the workhouse master, and that it was composed almost entirely of fat foreign to butter. It did not state the percentage of butter fats and foreign fats found in the sample. It was held that there was evidence before the magistrates that the sample sent by the workhouse master and the sample analysed by the analyst were identical; that although the analyst's certificate did not follow the form of the Schedule to the Act, it was sufficient, as its meaning was that practically the material was not butter; and that s. 16, *supra*, was an enabling section and did not prevent evidence being given that the parcel had been sent to the analyst in a manner other than by registered post (*Austin* v. *Dunshaughlin Guardians* (1910), 45 Ir. L. T. 213.

(*b*) A master is liable under this section for a refusal by his servant (*Farley* v. *Higginbotham*, *ante*, p. 1584). As to the penalty for refusing to supply samples of milk, see 42 & 43 Vict. c. 30, s. 4, *post*, p. 1692. Section 5 of that Act extends this section to sales in the streets. After a purchase by an inspector and his announcement that the purchase was for analysis, the respondent snatched the tin out of the inspector's hands, showed him the label on it, and refused to give it back, though offering to return the money:—*Held*, that the respondent could not be convicted of larceny (*Hewson* v. *Gamble* (1892), 56 J. P. 101). An inspector is entitled under this section to demand and be supplied in the same manner as the public are being supplied, and consequently if a dairyman supplying milk to the public by retail from cans refuses to supply the inspector with milk on demand except from the top of one of the cans instead of from its cran from which the public are being supplied, he is guilty of a contravention of this section (*Soutar* v. *Kerr* (1907), S. C. (J.) 49). But wilful obstruction is now punishable under the Sale of Food and Drugs Act, 1899, s. 16, *post*, p. 1972. In *Soutar* v. *Kerr*, *supra*, it was held that the dairyman could not be convicted under that section.

Where a publican refused to sell to an inspector rum for analysis out of a glass bottle from which he had already sold him some for drinking, the inspector not being known to the publican nor in uniform, nor having with him any certified copy of the general resolution of quarter sessions under which he was acting, nor communicating his authority even verbally to the publican, it was held that the publican might, nevertheless, be convicted of an offence under this section (*Payne* v. *Hack* (1894), 58 J. P. 165). When an inspector asked for new milk out of a particular can which the appellant was taking with him on his rounds the appellant upset all the contents of the can into the road. This can contained skimmed milk which the appellant alleged he was about to deliver to persons to whom he regularly supplied skimmed milk. There was no label or mark to indicate the contents of the can. The appellant was convicted under this section, but the conviction was quashed, the court holding that the can did not require to be labelled "skimmed milk," as s. 11 of the Sale of Food and Drugs Act, 1899, does not apply to milk carried round for sale in an ordinary can, but only to condensed milk, and that there was no evidence that the appellant was exposing the milk for sale as new milk (*French* v. *Card* (1909), 73 J. P. 389; 101 L. T. 428).

Section 17 of the Sale of Food and Drugs Act, 1875, applies to articles of food, etc., exposed for sale by wholesale as well as by retail (*M'Hugh* v. *M'Grath*, [1894] 2 I. R. 78).

Any member of the public can institute a prosecution under this section (*Connor* v. *Butler*, [1902] 2 I. R. 569).

(*c*) The Middlesex Sessions held that this certificate was a condition precedent to the conviction, and that if it were not in the prescribed form the conviction must be quashed (*Peart* v. *Barstow* (1880), 44 J. P. 699). But see *Austin* v. *Dunshaughlin Guardians*, *supra*. The certificate need not set out the constituent parts of the sample analysed where the case is not one of adulteration; it need only state the result of the analysis. The "observations" which in the form given in the Schedule follow after the result of the analysis are only to be made where the case is one of adulteration; but the addition, in cases

19. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof; and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct (*d*), a certified copy of such quarterly report. Quarterly report of the analyst.

where adulteration is not charged, of "observations" amounting only to an expression of opinion on the part of the analyst and not to a finding of fact, although unauthorised and improper, will not necessarily vitiate the certificate (*Bakewell* v. *Davis*, [1894] 1 Q. B. 297; 58 J. P. 228). Where adulteration is charged the certificate must state the constituent parts of the sample, as, for instance, on a charge of selling adulterated rum the certificate found that the sample contained an excess of water over and above what is allowed by Act of Parliament estimated at 13 per cent. of the entire sample, and this certificate was held insufficient (*Newby* v. *Sims*, [1894] 1 Q. B. 478; 58 J. P. 263). So where a certificate as to milk simply stated that it contained 5 per cent. of added water, it was held insufficient (*Fortune* v. *Hanson*, [1896] 1 Q. B. 202; 60 J. P. 88). But where a similar certificate went on to add, "This opinion is based on the fact that the sample contained 7·97 per cent. solids other than fat, whereas genuine milk contains not less than 8·5 per cent. solids not fat," it was held sufficient (*Bridge* v. *Howard*, [1897] 1 Q. B. 80; 60 J. P. 790). As to milk, cream, butter, or cheese certificates, see now the Sale of Food and Drugs Act, 1899, s. 4, *post*, p. 1967. Certificates stating that beer "contains arsenic," or "contains a serious quantity of arsenic," are insufficient (*Goulder* v. *Rook*, *ante*, p. 1580). But the insertion in the certificate of the weight of the sample analysed is obligatory only where the weight of the sample is material to the accuracy of the analysis, and its omission does not invalidate the certificate where the accuracy of the analysis does not in any way depend upon the weight of the sample (*Sneath* v. *Taylor*, [1901] 2 K. B. 376; 65 J. P. 548). See also *Hunter* v. *Wintrup* (1906), 7 F. (Just. Cas.) 22. A certificate of analysis of brandy stating that it had been reduced from 25 degrees under proof to 27·6 degrees under proof, was held sufficient in *Findley* v. *Haas* (1903), 67 J. P. 198; 88 L. T. 465. A certificate in the case of a drug liable to decomposition should contain a report as to whether any change has taken place in the constitution of the article which would interfere with the analysis (*Hudson* v. *Bridge* (1903), 67 J. P. 186; 88 L. T. 550). See also *Hunter* v. *Wintrup*, *supra*. The certificate need not state that the article is injurious to health (*Hull* v. *Horsnell*, *ante*, p. 1577).

In proceedings for an offence against the Sale of Food and Drugs Act, 1899, s. 1, as extended by the Butter and Margarine Act, 1907, s. 5, the certificate of analysis by the principal chemist of the Government laboratories need not follow the form of the certificate prescribed by this section (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494).

(*d*) The prescribed form is as follows:

Sale of Food and Drugs Act, 1875.

Report of the Public Analyst appointed for the of upon the Articles analysed by him under the above Act during the Quarter ending the .

Article submitted for Analysis.	State whether the Sample was submitted to the Analyst by an Officer acting under the direction of a Local Authority under s. 13 of the Act, and, if so, the name of such Authority.	Result of Analysis showing whether the Sample was Genuine or Adulterated, and, if Adulterated, what was the nature and extent of the Adulteration.	The sum paid in respect of the Analysis.	Observations.

Total number of samples analysed during the quarter .

Signed

Public Analyst.

Dated .

See a circular of the L. G. B., dated December 30, 1911, as to information which the Board desire to be furnished with each quarterly report.

PROCEEDINGS AGAINST OFFENDERS.

Proceedings against offenders.

20. When the analyst, having analysed any article, shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act (*e*) has been committed, the person causing the analysis to be made (*f*) may take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser (*g*), in a summary manner.

11 & 12 Vict. c. 43.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the Summary Jurisdiction Act, 1848. . . . (*h*)

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Certificate of analyst primâ facie evidence.

21. At the hearing of the information in such proceeding (*i*) the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated (*k*), unless the defendant shall require that the analyst shall be called as a witness (*l*), and the parts of the articles retained by the person who purchased the article shall be produced (*m*); and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

(*e*) Or of s. 4 of the Act of 1879. See *per* HAWKINS, J., in *R.* v. *Smith*, [1896] 1 Q. B. 596.

(*f*) This includes officers of the L. G. B. and the Board of Agriculture acting as private persons under this section instead of officially under s. 2 (1) of the Sale of Food and Drugs Act, 1899 (*Falconer* v. *Whyte*, [1908] S. C. (J.) 40).

(*g*) Or the sample was procured as mentioned in s. 3 of the Act of 1879. See *per* HAWKINS, J., in *R.* v. *Smith, supra.* As to the limit of time within which proceedings must be taken, see *Thomas* v. *Houghton*, [1911] 2 K. B. 959; 75 J. P. 523.

(*h*) The remainder of this paragraph of this section relates solely to Ireland, and is therefore omitted. As to the time within which proceedings must be taken and the delivery of particulars of the offence charged, see the Sale of Food and Drugs Act, 1899, s. 19, *post*, p. 1973. As to the application of s. 1 of the Summary Jurisdiction Act, 1848, respecting amendment of process, see *Hiett* v. *Ward*, *ante*. p. 1580.

Where a constable prosecutes it is not necessary as a condition precedent to prove that he was directed to prosecute by the local authority who appointed him (*Hale* v. *Cole* (1891), 55 J. P. 376). A local authority not authorised to appoint an analyst under s. 10, *ante*, p. 1583, may nevertheless prosecute by their inspector of nuisances (*Worthington* v. *Kyme*, *ante*, p. 1583). But a local authority cannot prosecute in their own name (*Colquhoun* v. *Magistrates of Dumbarton* (1907), 9 F. (Just. Cas.) 57).

Where a limited company is defendant the summons must be served in accordance with the provisions of s. 116 of the Companies (Consolidation) Act, 1908 (*Pearks, Gunston and Tee, Ltd.* v. *Richardson*, [1902] 1 K. B. 91; 66 J. P. 119).

(*i*) *I.e.*, the proceedings mentioned in s. 20, *supra*, and no others (*Tyler* v. *Kingham*, [1900] 2 Q. B. 413; 64 J. P. 598).

(*k*) See *Austin* v. *Dunshaughlin Guardians*, the facts of which are set out, *ante*, pp. 1585, 1586.

(*l*) Therefore, if no evidence is tendered by the defendant the magistrate must act on the certificate, and convict (*Harrison* v. *Richards* (1881), 45 J. P. 552; *Elder* v. *Dryden* (1908), 72 J. P. 355; 99 L. T. 20). But see *Macleod* v. *O'Neill*, *ante*, p. 1579. And in *R.* v. *Field* (1895), 64 L. J. M. C. 158; 11 T. L. R. 240; and *Shortt* v. *Robinson* (1899), 68 L. J. Q. B. 352; 63 J. P. 295, it was held that justices might act on their own knowledge in opposition to the certificate, and see *Banks* v. *Wooler*, *ante*, p. 1580, and *Preston* v. *Redfern* (1912), 76 J. P. 359; 107 L. T. 410. If the defendant tender himself as a witness he may give evidence to contradict the certificate, although he does not require the analyst to be called as a witness, nor require an analysis by the Inland Revenue. And on such evidence the justices may decide either way as a question of fact whether there has been adulteration or not (*Hewitt* v. *Taylor*, [1896] 1 Q. B. 287; 60 J. P. 311). It is not necessary for an inspector to prove that he is a duly authorised officer; so held by CHANNELL and AVORY, JJ., in *Ross* v. *Helm* (1913), 77 J. P. 13; 107 L. T. 829. *Cf.* the Sale of Food and Drugs Act, 1899, s. 22, *post*, p. 1975.

(*m*) In Scotland, it has been held that production of the part retained is a condition precedent to a conviction (*Hutchinson* v. *Stevenson* (1903), 4 F. (Just. Cas.) 69. See 67 J. P. 111); but in England it has been held that it is not a condition precedent that such part, if produced, is in a state fit for analysis (*Suckling* v. *Parker*, [1906] 1 K. B. 527; 70 J. P. 209).

22. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue (*n*), who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct (*o*).

Power to justices to have articles of food and drug analysed.

23. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace . . . (*p*).

Appeal to quarter sessions.

24. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Proof by defendant of exception or provision.

25. If the defendant (*q*) in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect (*r*),

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty.

(*n*) The Commissioners of Inland Revenue have issued regulations as to the transmission to them of articles for analysis, which are as follows:

"1. The sample to be retained by the purchaser as stated in ss. 14 and 15 of the Act should be carefully sealed up and secured either in paper or in a box, as the case may be.

"2. The seal used should bear a motto or device not in common use, to enable its identity to be sworn to.

"3. If sent through the post the instructions issued by the Postmaster-General for the transmission of such samples should be carefully carried out, and the parcel should be addressed to The Commissioners of Inland Revenue, Inland Revenue Office, Somerset House, London, W.C., The Principal of the Laboratory; and in addition to the nature of the contents being stated on the front of the packet as enjoined by the Postmaster-General, the name of the place whence sent should be stated. If despatched by railway or other conveyance, the address above given, with the name of the place from which forwarded, will be sufficient.

"4. At the time the parcel is despatched by post or otherwise, a letter should be sent by post to the Principal of the Laboratory, apprising him of the transmission of the sample for analysis, and stating the nature of the alleged adulteration and such other particulars as may be considered necessary to facilitate the examination of the sample."

As to the instructions of the Postmaster-General above referred to, see note to s. 16, *supra*.

The Government Laboratory is now located in Clement's Inn Passage, Strand, W. C., and not in Somerset House.

(*o*) By the Sale of Food and Drugs Act, 1899, s. 21, *post*, p. 1975, the justices must make an order for analysis under this section on the request of either party, and may do so without any such request. It was held by the Court of Session in Scotland that the reference in this section to the chemical officers of Somerset House is for the purpose of obtaining the result of their analysis merely, and that, therefore, their opinion as to what is the minimum percentage of fat to be found in new milk cannot be received as evidence (*Dargie* v. *Dunbar* (1884), 11 Ct. of Sess. Cas. (4th ser.) (J. C.) 37). See also *per* CHANNELL, J., in *Shortt* v. *Robinson* (1899), 68 L. J. Q. B. 352; 63 J. P. 295. The certificate of the Government analyst is not conclusive if there is substantial evidence to the contrary of the opinion contained in the certificate. See *Fyfe* v. *Hamilton* (1894), 1 Adam, 484; *Todd* v. *Cochrane* (1901), 3 Adam, 357.

(*p*) This paragraph of this section is here printed as it is left unrepealed by the S. J. A., 1884, which substitutes the corresponding provisions of the S. J. Acts. The remainder of this section relates solely to Ireland, and is therefore omitted.

(*q*) Including a joint stock company (*Chuter* v. *Freeth and Pocock, Ltd.*, [1911] 2 K. B. 832; 75 J. P. 430). And see as to indictment, *R.* v. *Ascanio Puck & Co., Ltd.* (1912), 76 J. P. 487; 28 T. L. R. 197.

(*r*) An invoice describing an article as lard was held to be a description and not a warranty (*Rook* v. *Hopley* (1878), 3 Ex. D. 209; 42 J. P. 551). Invoices are expressly

that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased

mentioned in 50 & 51 Vict. c. 29, s. 7, *post*, p. 1802, and in 62 & 63 Vict. c. 51, s. 20, *post*, p. 1974. And it was decided in *Hawkins* v. *Williams* (1895), 11 T. L. R. 425; 59 J. P. 533, that an invoice may be evidence of a warranty given at the time of sale; and see *Irving* v. *Callow Park Dairy Co., Ltd.* (1902), 66 J. P. 804; 87 L. T. 70. A written contract to supply new and pure milk for six months will not protect the vendor under this section in respect of subsequent deliveries during the six months in the absence of any evidence in writing that the delivery was a delivery under the contract (*Harris* v. *May* (1883), 12 Q. B. D. 97; 48 J. P. 261). This decision was dissented from in *Elliott* v. *Pilcher*, [1901] 2 K. B. 817; 65 J. P. 743, but was followed in *Watts* v. *Stevens*, [1906] 2 K. B. 323; 70 J. P. 418, where it was held that in the absence of any evidence in writing connecting the particular milk sold with the warranty, the warranty afforded no defence.

Lard was bought in skins from the manufacturers stamped with the words "warranted pure," and was sold in the same state, but this was held no sufficient warranty (*Elder* v. *Smithson* (1893), 57 J. P. 809; 10 T. L. R. 61). But where a firm of lard manufacturers contracted in writing for the sale of lard to the defendant in these terms: "We have this day sold you three tons Kilvert's pure lard for delivery to end of January," and a parcel of lard was accordingly consigned to the defendant under an invoice describing it, in the words of the contract, as "Kilvert's pure bladdered lard," and part of that parcel was sold by him in the same state as it was in when he bought it, as and for lard; but it was found on analysis to be adulterated, it was held that the written contract and invoice contained a sufficient warranty (*Laidlaw* v. *Wilson*, [1894] 1 Q. B. 74; 58 J. P. 58). This case was followed in *Elliott* v. *Pilcher*, and *Watts* v. *Stevens*, *supra*. So, also, where the defendant bought from G. & Co. a cask of vinegar bearing a printed label "Vinegar, warranted unadulterated—G. & Co., Limited, Cumberland Market, London," it was held a sufficient warranty (*Lindsay* v. *Rook* (1894), 63 L. J. M. C. 231; 58 J. P. 735).

But where the appellant sold ginger out of a tin canister bearing the manufacturer's label, "Warranted pure ground ginger," and proved that he bought it from a wholesale dealer (not the manufacturer) in the same state as when he sold it, the invoice also stating it to be ground ginger, it was held that there was no sufficient warranty within this section, and that in order to constitute a warranty there must be some express individual representation in writing by the vendor as part of the bargain (*Jiorns* v. *Van Tromp* (1895), 64 L. J. M. C. 171; 59 J. P. 246). See, however, *Hawkins* v. *Williams* (1895), 59 J. P. 533; 11 T. L. R. 425. If the defendant relies on a warranty given to him by the person from whom he bought the article he must prove that he sold it in the same state as when he received it, and it is not enough for him to say that he had no reason to believe it had been adulterated whilst in his possession (*Jones* v. *Bertram* (1894), 58 J. P. 478; 10 T. L. R. 285).

Milk was consigned to the F. Dairies Company by railway in cans bearing labels which stated that the contents were "warranted genuine new milk with all its cream on. From R. T."; and there was a written agreement between the F. Dairies Company and R. T. whereby he contracted to supply them for six months with milk warranted pure and with all its cream on. H., a servant of the Company, did not test the milk on receiving it, though he had an instrument for the purpose, and frequently tested milk when so received by him:—*Held*, that this section was not applicable, and that even if it would have entitled H. to be discharged from the proceedings he had not established that, at the time when he sold the milk, he had no reason to believe that its quality was otherwise than as demanded of him by the respondent (*Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 55 J. P. 775).

The addition to a warranty of the words "but without accepting any responsibility after delivery," do not affect the warranty so as to make it unavailable as a defence under this section (*Wilson* v. *Playle* (1903), 67 J. P. 263; 88 L. T. 554), followed in *Plowright* v. *Burrell*, [1913] 2 K. B. 362; 77 J. P. 245.

S., an inspector, charged F. with unlawfully selling milk not of the substance, etc. demanded. The milk was found to have 20 per cent. of fat extracted. The defence of F. was that he had a contract for supplying pure milk, and the milk had been sold in the same state in which it was received. The contract was to supply F. with 100 gallons daily of the best milk, and the vendor warranted the quality of such milk. Each churn when delivered had a label describing it as genuine new milk:—*Held*, that the magistrate was wrong in treating the contract and label to be a description only, as it was a warranty within the meaning of the Act, and a valid defence (*Farmers' Dairies Co.* v. *Stevenson* (1891), 60 L. J. M. C. 70; 55 J. P. 407). But in a very similar case, except that there were no labels to identify the milk as delivered under the contract containing the clause for the supply of new and pure milk, it was held that there was no proof that the milk was purchased *with* the warranty, assuming the clause in the contract to amount to a warranty in respect of the future deliveries (*Robertson* v. *Harris* [1900] 2 Q. B. 117; 64 J. P. 565). *Farmers' Dairies Co.* v. *Stevenson*, *supra*, was followed in *Watts* v. *Stevens*, *supra*. The latter case

it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence (*s*).

was discussed in *Evans* v. *Weatheritt*, [1907] 2 K. B. 80 ; 71 J. P. 228, the facts of which were as follows : A dairyman contracted with a dairy company to purchase from them the whole of the milk required for his dairy for twelve months, all the milk being warranted pure with all its cream as received from the cow. Nine months afterwards a consignment of milk was delivered by the company under the contract with a delivery note giving the date and the name of the company as consignors. A portion of milk was sold by the dairyman to the respondent, and on analysis was found to be deficient in milk fat by 28 per cent. On a prosecution of the dairyman under s. 9 of this Act, for selling milk in its altered state, he relied on the contract with the company as a warranty under this section. It was held that as by the terms of the contract he was bound to take all his milk from the company, there was a sufficient connection in writing between the particular consignment and the warranty to constitute the warranty a defence.

The cases of *Watts* v. *Stevens* and *Evans* v. *Weatheritt* were followed in *Draper* v. *Newnham* (1910), 74 J. P. 124 ; 102 L. T. 280. The respondent was summoned under s. 6, *ante*, and he proved that the milk in question had been supplied to him by a farmer who had for several years supplied him under a verbal contract with all the milk required by him. In September, 1908, the farmer had given him the following written warranty : "I hereby guarantee and warrant that all milk supplied by me to you is of the nature, quality and substance demanded by law, and I give this warranty for the purposes of the Sale of Food and Drugs Act, 1899." The justices found that this document was intended by both parties to cover the delivery of the milk in question and that it did cover such delivery. The Divisional Court held that in these circumstances there was a sufficient warranty within this section.

In another case the respondent had purchased the milk from a dairy company under an agreement which contained a clause stating that the company " purchase all milk sold by them under a warranty of its purity from the farmers and agree to put the same on rail, thoroughly well cooled over a refrigerator, and guarantee it as such up to the time of delivery." It was held that the above clause constituted a warranty within the section (*Jackling* v. *Carter* (1912), 76 J. P. 292 ; 107 L. T. 24).

In answer to a summons under s. 6, *ante*, the defendant set up a warranty contained in a contract by which his vendor, E., agreed to supply to the defendant milk supplied to E., by one B., in the same condition as received and as warranted by him, namely, pure, new, unskimmed milk. In a label which was attached to the milk in question and was addressed to E., were the words " Warranted pure new and unskimmed milk." The defendant as agent for E., received at a railway station the particular milk in question which was consigned from B. to E. It was held that whether the label was or was not a warranty within s. 25, such a warranty was contained in the contract between E. and the defendant, and the label constituted a sufficient connection between the particular consignment and the warranty, and therefore the defendant could not be convicted (*Rees* v. *Davis* (1908), 72 J. P. 375 ; 24 T. L. R. 735). And where there has been a written contract for a fixed period between a seller and a purchaser of milk, that the seller will supply milk daily to the purchaser, and the seller in the contract warrants the milk as pure, and the contract having come to an end, the seller continues to supply the purchaser with milk, to each churn of which is attached a written warranty of purity with the names of the two parties to the sale thereon, the purchaser, having resold the milk as pure milk, can rely on the defence under this section that he has purchased the milk as the same in nature, substance and quality as that demanded of him by the prosecutor, and with a written warranty to that effect (*Lewis* v. *Weatheritt* (1909), 73 J. P. 164 ; 100 L. T. 367).

In *Sanders* v. *Sadler* (1907), 71 J. P. 3 ; 95 L. T. 872, the defendant had entered into a written contract for the purchase of " 16 gallons of pure new milk with all its cream delivered daily carriage paid to Wanstead Park Station," and whilst this contract was in force the churns arrived at that station consigned to the defendant from a station in Derbyshire, and labelled " Warranted pure new milk with all its cream, pursuant to contract." The churns remained at Wanstead Park Station for nearly an hour, and were then taken away by defendant to her dairy, and proved by her to have been sold in the same state as when she received it at Wanstead Park Station :—*Held*, that she was thereby discharged under s. 25.

The warranty must be a warranty in writing from the vendor and not from a third person verbally adopted by the vendor (*Hargreaves* v. *Spackman* (1908), 72 J. P. 52 ; 98 L. T. 41).

In addition to the other things required by this section, it is now necessary for the purchaser in the case of a foreign warranty to prove that he had taken steps to ascertain

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(*s*) For note (*s*) see p. 1592.

Application of penalties.

26. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner . . . (*t*)

Forging certificate or warranty; wilful misapplication of warranty;

27. [*Repealed by the Forgery Act*, 1913.]

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds (*u*).

. . . . .

false label.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Proceedings by indictment and contracts not to be affected.

28. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable (*x*).

and did in fact believe in the truth of it. See the Sale of Food and Drugs Act, 1899, s. 20 (3), *post*, p. 1974.

As to the right of action on an implied warranty under s. 14 of the Sale of Goods Act, 1893, see *Wallis* v. *Russell*, [1902] 2 I. R. 585; *Wren* v. *Holt*, [1903] 1 K. B. 610; 67 J. P. 191; *Preist* v. *Last*, [1903] 2 K. B. 148; *Frost* v. *Aylesbury Dairy Co.*, [1905] 1 K. B. 608.

(*s*) Notice must now be given in accordance with the Sale of Food and Drugs Act, 1899, s. 20 (1), *post*, p. 1974. The addition of boric acid to milk before sale will prevent the vendor from relying on the warranty defence because it is not sold in the same state as when it was purchased (*Hennen* v. *Long* (1904), 68 J. P. 237; 90 L. T. 387). See now s. 7 of the Butter and Margarine Act, 1907, as to the use of preservatives in butter, etc.

(*t*) The remainder of this section applies to Ireland only. Justices should bear in mind the Home Office Circular, July 24th, 1902, with regard to the infliction of adequate penalties (66 J. P. 537).

(*u*) As to increased penalties for the second or any subsequent offence, see 62 & 63 Vict. c. 51, s. 17, *post*, p. 1972. The provisions of this section relating to false warranty were repealed by 62 & 63 Vict. c. 51, s. 27, and Schedule, *post*, p. 1977. See now s. 20 of that Act, *post*, p. 1974.

(*x*) As to the meaning of "pure" butter in a trade contract, it was held in *Roose* v. *Perry & Co.* (1900), 44 Sol. J. 503, that butter to which a small quantity of boracic acid

EXPENSES OF EXECUTING THE ACT.

29. The expenses of executing this Act (*y*) shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate . . . (*z*). Expenses of executing Act.

SPECIAL PROVISION AS TO TEA.

30. All tea imported as merchandise into and loaded at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct (*a*). Tea to be examined by the Customs on importation.

31. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means. Definition of "exhausted tea."

32. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county. Provision for the liberty of a cinque port.

33. [*Application of the Act to Scotland.*] (*b*)

34. [*Application of the Act to Ireland.*] (*b*)

35. [*Commencement of the Act.*] (*b*)

36. This Act may be cited as "The Sale of Food and Drugs Act, 1875." Short title.

had been added as a preservative might be "pure" butter. See now s. 7 of the Butter and Margarine Act, 1907, as to the use of preservatives in butter, etc.

(*y*) These include expenses under the Sale of Food and Drugs Act, 1899, s. 3 (3), *post*, p. 1967.

(*z*) The remainder of this section relates to Ireland only.

(*a*) Some words at the beginning of this section were repealed by the S. L. R. (No. 2) A., 1893. A person who represents tea to be good when it is in fact unfit to drink may be convicted of obtaining money by false pretences. See *R.* v. *Foster* (1876), 2 Q. B. D. 301; 41 J. P. 295. As to the sale of green tea in the same state as imported, see *Roberts* v. *Egerton*, *ante*, p. 1581. As to the powers of the Commissioners of Customs in regard to articles other than tea, see the Sale of Food and Drugs Act, 1899, s. 1, *post*, p. 1965.

(*b*) Section 33 relates to Scotland, and s. 34 to Ireland only. Section 35 was repealed by the S. L. R. (No. 2) A., 1893.

[Sect. 18.]

SCHEDULE.

FORM OF CERTIFICATE.

To * .

I, the undersigned, public analyst for the , do hereby certify that I received on the day of 18 from † , a sample of for analysis (which then weighed ‡), and have analysed the same, and declare the result of my analysis to be as follows:

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations. §

As witness my hand this day of .

A. B.,
at .

* Here insert the name of the person submitting the article for analysis.

† Here insert the name of the person delivering the sample.

‡ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

§ Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

THE LOCAL LOANS ACT, 1875.

(38 & 39 VICT. c. 83.) (*c*)

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities. [13th August 1875.]

(1) PRELIMINARY.

Short title.

1. This Act may be cited for all purposes as "The Local Loans Act, 1875."

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

3. [*Commencement of Act.*]

Definition of borrowing under Act.

4. A local authority (*d*) shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture

(*c*) This Act is amended by the Local Loans Sinking Funds Act, 1885, *post*, p. 1791. The preamble and clause of enactment and s. 3 of this Act were repealed by the S. L. R. (No. 2) A., 1893.

(*d*) See the definition of local authority in s. 34, *post*, p. 1605. The term includes sanitary authorities. As to stamp duty on loan capital, see the Finance Act, 1899, s. 8, *ante*, p. 867, as amended by the Finance Act, 1907, s. 10, *post*, p. 2070.

stock (*e*) or annuity certificates, purporting to be created under its powers, or partly in one way, and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted (*f*).

(2) Debentures (*g*).

5. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate (*h*) or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified. Regulations as to debentures.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.

A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

(3) Debenture Stock (*i*).

6. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock (*k*). Such debenture stock shall be of a nominal amount, not exceeding Regulations as to debenture stock.

(*e*) This Act itself does not give power to issue debenture stock. See s. 6, *infra*. The L. G. B. state that they have been advised by the law officers of the Crown that a local authority cannot exercise a borrowing power by the issue of debenture stock under this Act unless they have power independently of the Act to raise the loan by the issue of debenture stock. The Board, however, think it is competent to a local authority to avail themselves of the Act for the exercise of borrowing powers under Acts passed subsequently to this Act so far as regards the issue of securities other than debenture stock.

(*f*) As to what is the prescribed mode, see s. 34, *post*, p. 1605.

(*g*) As to stamp duty, see Stamp Act, 1891, ss. 82 (1), 85 (1), (2), 122, and Schedule, title "Marketable Security." And as to composition for stamp duty, see s. 115 of the same Act.

(*h*) See the definition in s. 34, *post*, p. 1605.

(*i*) As to stamp duty, see the Stamp Act, 1891, ss. 108, 109, and Schedule, title "Share Warrants, etc." As to composition for stamp duty, see s. 115 of the same Act. As to corporation duty under the Customs and Inland Revenue Act, 1885, s. 11, payable on income of a sinking fund vested in trustees, see *Att.-Gen.* v. *City of London Corporation*, [1913] 2 K. B. 497.

(*k*) Therefore there must be power under a special Act to issue debenture stock. See note (*e*), *supra*. An urban authority can, by adopting Part V. of the P. H. A., 1890, *ante*, p. 867, acquire power to create stock.

the amount of money authorised to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof (*l*).

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

(*l*) A corporation were empowered by a local Act to create and issue corporation stock "to bear any rate of dividend which the corporation may fix, and all stock of such class shall be redeemable at the option of the corporation at one and the same period to be fixed by the corporation but not exceeding sixty years from the first issue of such stock." The corporation created and issued stock, the certificates for which stated that the holders were the proprietors of a certain amount of "Edinburgh 2½ per cent. stock subject to the Acts of Parliament relating thereto . . . redeemable at par after Whitsunday, 1927." It was held that the corporation had an option to redeem the stock at par after Whitsunday, 1927, but that they were not bound to do so (*Edinburgh Corporation* v. *British Linen Bank*, [1913] A. C. 133).

(4) ANNUITY CERTIFICATES.

7. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified. Regulations as to annuity certificates.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds.

(5) PRIORITY OF LOANS.

8. All sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of the same loan by a local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities. Priority of loans.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorised to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorised to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6) NOTICE OF TRUSTS.

9. No notice of any trust, expressed implied or constructive, shall be received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act (*m*). Notice of trust not receivable.

(*m*) *Cf.* s. 27 of the Companies (Consolidation) Act, 1908, and s. 20 of the Companies Clauses Act, 1845. The object of this section is (a) to relieve the local authority from taking notice of equitable interests in securities, and (b) to preclude persons claiming under equitable titles from converting the local authority into a trustee for them.

Owners of securities not responsible for act of local authority.

10. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

(7) REMEDY FOR NON-PAYMENT.

Remedy by mandamus for non-payment of money.

11. The local authority shall pay or raise all sums for the time being due or authorised to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a mandamus will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a mandamus may be claimed (*n*).

Remedy by appointment of receiver for non-payment of money.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver (*o*); and any receiver so appointed (subject to any direction which may be given by the court shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by the receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act mentioned (*p*), by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(*n*) See R. S. C., 1883, Order LIII.
(*o*) See County Court Rules, Order XLIII., rr. 1, 3.
(*p*) See ss. 5, 6, *ante*, p. 1595.

(8) Discharge of Loan.

13. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period (*q*) from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; that is to say,

Loan borrowed to be discharged within prescribed period.

By the issue of annuity certificates limited to expire within the prescribed period; or

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period; or

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or

Where a sinking fund is prescribed, but not otherwise (*r*), by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

14. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

Discharge of loan by appropriation of annual sum

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn in the presence of the local authority, and any owners of debenture (*s*) or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

(*q*) As to the prescribed period, see s. 34, *post*, p. 1605; *cf.* the P. H. A., 1875, s. 234 (4), (6), *ante*, p. 526.

(*r*) It is provided by the Local Loans Sinking Funds Act, 1885, *post*, p. 1791, that, notwithstanding anything contained in the above Act, every loan borrowed in manner provided by the above Act, may be discharged by the establishment of a sinking fund as therein mentioned, notwithstanding that a sinking fund may not have been prescribed by the special Act authorising the loan.

(*s*) *Sic.* in statute. It should read "debentures."

Discharge of loan by sinking fund.

15. Where a sinking fund is prescribed (*t*) for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter mentioned ; that is to say,

(1) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority, (regard being had to the securities in which they are authorised to make investments), will at the expiration of some period not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan ; and

(2) The first of such payments shall be made within one year from the date of the loan ; and

(3) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorised to invest, or in debentures, debenture stock, or annuity certificates issued under this Act ; and any such investments may be from time to time varied or transposed ; and all dividends and other annual sums received in respect of such investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner ; and

(4) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose :

(5) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned :

(6) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority ; or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient :

(7) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act :

(8) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual

(*t*) See note (*r*), *ante*, p. 1599.

sums required by this section to be paid into the sinking fund may cease to be so paid.

16. Where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the Board from time to time directs (*u*), showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, the Board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by mandamus. Annual return as to sinking fund.

Supplemental Provisions.

(1) As to Coupons.

17. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period (*v*). Temporary issue of coupons.

18. A coupon payable to order which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser. Endorsement and crossing of coupons.

Where the coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or the words of "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named, or some banker (*x*).

(*u*) The L. G. B. have, by an Order dated November 14th, 1878, prescribed a form of return under this section. The Order will be found in Glen's Local Government Orders, p. 324. See also Circular, November 25th, 1878, *ibid.*, p. 327.

(*v*) For power of local authority to make rules as to issue of coupons, see s. 30, *post*, p. 1604.

(*x*) As to crossed coupons, see s. 32, *post*, p. 1605. Also Bills of Exchange Act, 1882, ss. 76—82, and Revenue Act, 1883, s. 17.

Coupons issued exempt from stamp duty.

19. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

(2) AS TO STOCK CERTIFICATES.

Conversion into nominal debenture stock of stock certificate to bearer.

20. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

21. [*Trustee not to apply for stock certificate to bearer.*] (*y*)

(3) AS TO EXECUTION AND SUPPLY OF SECURITIES.

Execution and supply of securities.

22. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

The Commissioners of Inland Revenue may, when required by the local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4) AS TO REGISTER OF NOMINAL SECURITIES.

Register of nominal securities.

23. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register (*z*) of such securities to be kept in one or more book or books, and there shall be entered in such register—

(1) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered; and,

(2) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.

Inspection of register.

24. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every

(*y*) This section was repealed by s. 51 of the Trustee Act, 1893. See now s. 7 of that Act, enacting that "a trustee, unless authorised by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts, . . . the Local Loans Act, 1875, . . . nothing in this section shall impose on the Bank of England or of Ireland, or on any person authorised to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted."

(*z*) For power of local authority to make rules as to registry, see s. 30, *post*, p. 1604.

folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Rectification of register.

25. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred; and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court (*a*); and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

(5) As to Loans under Official Sanction.

Permissive issue of securities under official sanction.

26. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorise the issue of such securities under official sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue; and the Local Government Board may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient; and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.

The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars; that is to say,

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate, and

(*a*) See County Court Rules, Order XLIII., rr. 2, 3.

where the security is a charge on property, of the estimated value of such property; also of

The relative priority of the loan, in respect of which such security is issued, and of the other loans (if any) of the borrowing authority;

and such statement shall be evidence of the particulars therein stated.

(6) AS TO INVESTMENTS ON LOANS UNDER ACT.

27. [*Power for trustees to invest in loans under Act.*] (*b*)

Power for Public Works Loan Commissioners to take securities under Act.

28. When the Public Works Loan Commissioners are authorised to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan.

(7) AS TO GENERAL RULES.

Application of rules in Schedule.

29. The general rules in the Schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act.

Power to make general rules.

30. The local authority may from time to time, with the consent of the Local Government Board, make, and, when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters:

(1) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and

(2) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the Schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.

(8) AS TO BORROWING.

Borrowing and re-borrowing by local authorities.

31. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks

(*b*) This section was repealed by s. 51 of the Trustee Act, 1893. See now s. 5 (3) of that Act, enacting that a trustee having power to invest money in debentures or debenture stock, of any railway, or other company may, unless the contrary is expressed in the instrument authorising the investment, invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875. But if the power of investment in railway stock is limited by the express terms of the instrument, it would seem that the limitation applies also to investment in stock under this Act (*Re Maberley* (1887), 33 Ch. D. 455).

The power given by the Act of 1893, s. 5 (3), is limited to trustees having power by the express terms of the instrument creating the trust to invest in railway debentures or debenture stock. Trustees only having power under s. 1 (g) of the Act of 1893 to invest in railway debentures or debenture stock, have not the additional power conferred by s. 5 (3) of investing in local loans debentures or debenture stock (*Re Tattersall's Trusts, Topham* v. *Armitage*, [1906] 2 Ch. 399; 70 J. P. 537).

fit, borrow in manner provided by this Act any loan which it is authorised to borrow (*c*).

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act: Provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

(9) As to Forgery and Loss of Securities.

32. For the purposes of the Forgery Act, 1861, debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker (*d*). Forgery of securities. 24 & 25 Vict. c. 98.

33. If any security issued under this Act is lost mislaid or destroyed, the local authority shall, on such indemnity being given as they may require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost mislaid or destroyed. Loss of securities.

(10) Definitions.

34. For the purposes of this Act— Definitions.

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorising a local authority to borrow money:

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority:

"Municipal borough" means any borough for the time being subject to the Municipal Corporations Act, 1835, and any Acts amending the same (*e*): 5 & 6 Will. 4, c. 76.

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate; and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid; and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly:

"Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise:

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act:

"Person" includes a body of persons corporate or unincorporate:

"Executors and administrators" includes successors.

(*c*) It is to be observed that this Act regulates the mode of borrowing and the securities to be given, but it does not itself authorise borrowing in any particular case or cases.

(*d*) As to crossed coupons, see note (*x*) to s. 18, *ante*, p. 1601. And see the Forged Transfers Acts, 1891 and 1892, *post*, pp. 1859, 1869.

(*e*) Now the Municipal Corporations Act, 1882. See s. 242 of that Act.

(11) REPEAL AND CONSEQUENTIAL ENACTMENT.

35. [*Repeal of* 36 & 37 *Vict. c.* 35.] (*f*)

36. [*Incorporation of justices.*] (*g*)

SCHEDULE.

GENERAL RULES.

[Sect. 29.] *Transfer of Nominal Securities.*

(1) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them (*h*).

(2) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by local authority shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

Transmission of Nominal Securities.

(4) The executors or administrators of a deceased owner of a nominal security shall be the only persons recognised by the local authority as having any title to such security.

(5) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evidence being produced as may from time to time be required by the local authority.

(6) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such security.

(7) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

(8) The instrument of transfer shall be presented to the local authority, accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9) In the construction of this schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.

THE CONSPIRACY, AND PROTECTION OF PROPERTY ACT, 1875.

(38 & 39 VICT. c. 86.)

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes. [13th August 1875.]

Short title. **1.** This Act may be cited as "The Conspiracy, and Protection of Property Act, 1875."

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(*f*) Repealed by the S. L. R. A., 1883.

(*g*) This section is omitted as immaterial for the purposes of the present work. It related to the incorporation of the justices of a county for the purposes of this Act.

(*h*) See also the Conveyancing and Law of Property Act, 1881, s. 61.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously (*i*) breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour. Breach of contract by persons employed in supply of gas or water.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

* * * * *

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board. Definitions of "municipal authority" and "public company."

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act. "Maliciously" in this Act construed as in Malicious Injuries to Property Act.

* * * * *

(*i*) As to the meaning of this word, see s. 15, *infra*. As to the right to claim trial by jury, see *R.* v. *Mitchell*, [1913] 1 K. B. 561; 77 J. P. 148.

THE PUBLIC WORKS LOANS ACT, 1875.

(38 & 38 VICT. c. 89.) (*k*)

An Act to consolidate with Amendments the Acts relating to Loans for Public Works. [13th August 1875.]

PRELIMINARY.

Short title. **1.** This Act may be cited as "The Public Works Loans Act, 1875."

2. [*Commencement of Act.*]

Extent of Act. **3.** This Act shall extend to the Isle of Man.

PUBLIC WORKS LOAN COMMISSIONERS.

Constitution, etc. of Public Works Loan Commissioners. **4.** For the purpose of loans out of moneys issued in pursuance of this Act, and for the purpose of the execution of this Act and of any enactment passed or hereafter to be passed authorising or referring to such loans, there shall be a body of commissioners (in this Act referred to as the Loan Commissioners), who may be styled the Public Works Loan Commissioners.

Every person who may from time to time be appointed by Act of Parliament a Public Works Loan Commissioner shall, on signing the declaration in the Second Schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act (*l*).

The Public Works Loan Commissioners shall hold office during such period as may be authorised by any Act appointing them, and if no period is so authorised, during the period of five years after the passing of such Act, and, if at the expiration of such period successors have not been appointed, may continue to hold office until successors be appointed, subject to this qualification, that they shall not grant any new loan after the expiration of such period.

Whenever any vacancy among the Commissioners occurs by any Commissioner dying or declining to act, or declining further to act, the remaining Commissioners or a majority of them may by writing under their hands and seals, with the concurrence of the Treasury, appoint such person to fill the vacancy as seems fit, and the person so appointed shall, on signing the declaration in the Second Schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act, and shall hold office for the period during which the Commissioner in whose place he is appointed would have held office.

A Public Works Loan Commissioner shall not receive any salary, fee, or emolument in respect of his services as such Commissioner.

Powers, etc. of Commissioners. **5.** With respect to the Loan Commissioners the following provisions shall have effect:

(1) The Loan Commissioners may sue and be sued in the name of their secretary for the time being; and no action or suit in law or equity

(*k*) The clause of enactment and s. 2 of this Act are repealed by the S. L. R. (No. 2) A., 1893. See the P. H. A., 1875, ss. 233—244, *ante*, pp. 519—539. See also the amending Acts, 39 & 40 Vict. c. 31; 41 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 45 & 46 Vict. c. 62; 50 & 51 Vict. c. 37; 55 & 56 Vict. c. 61; 59 & 60 Vict. c. 42; 60 & 61 Vict. c. 51; 61 & 62 Vict. c. 54; 62 & 63 Vict. c. 31; 3 Edw. 7, c. 28; 1 & 2 Geo. 5, c. 17. The other Acts relating to Public Works Loans, 43 & 44 Vict. c. 1; 47 & 48 Vict. c. 49; 48 & 49 Vict. c. 65; 49 & 50 Vict. c. 45; 51 & 52 Vict. c. 39; 52 & 53 Vict. c. 71; 53 & 54 Vict. c. 50; 54 & 55 Vict. c. 59; 56 & 57 Vict. cc. 24, 40; 57 & 58 Vict. c. 11; 59 Vict. c. 2; 1 Edw. 7, c. 35; 2 Edw. 7, c. 22; 3 Edw. 7, c. 28; 4 Edw. 7, c. 36; 5 Edw. 7, c. 22; 6 Edw. 7, c. 29; 7 Edw. 7, c. 36; 2 & 3 Geo. 5, c. 11; 3 & 4 Geo. 5, c. 22, are not included in this Appendix, as they relate only to the appointment of Commissioners, or to the grant of money by Parliament for the purposes of loans, or to particular loans.

(*l*) The names of the present Commissioners will be found in 10 Edw. 7, and 1 Geo. 5, c. 21. s. 1.

brought or commenced by or against the said Commissioners in the name of their secretary for the time being shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said Commissioners; but the secretary to the said Commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit as the case may be; and

(2) The Commissioners may examine any persons willing to be examined on any matters connected with the execution of this Act, and may for that purpose, or otherwise for the purpose of the execution of this Act, administer an oath, and take any affidavits or declaration; and

(3) The Loan Commissioners shall annually cause to be made out up to the end of every financial year a report of their transactions under this Act during the year, and such report shall contain or have annexed thereto the prescribed particulars respecting moneys issued to and loans granted by the Commissioners either before or after the passing of this Act, and the execution of the duties of the Loan Commissioners, and such other particulars as the Loan Commissioners may from time to time think fit:

Such particulars shall include a statement of any difference that may have arisen between the Loan Commissioners and any public department respecting the grant of any loan or the construction of any Act relating to loans by the Loan Commissioners:

Such report shall be transmitted to the Treasury within two (*m*) months after the date up to which it is required to be made, and shall be forthwith laid by the Treasury before both Houses of Parliament if Parliament be then sitting, or if not, within one month after the then next sitting of Parliament; and

(4) Any minute made of proceedings at meetings of the Commissioners, if signed by any person purporting to be the chairman, either of the meeting of the Commissioners at which such proceedings took place, or of the next ensuing meeting of the Commissioners, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved every meeting of the Commissioners, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act; and

(5) An act or proceeding of the Commissioners shall not be questioned on account of any vacancy or vacancies in their body.

Officers and their salaries and expenses.

6. The Loan Commissioners may from time to time appoint or employ a secretary, solicitor, civil engineer, surveyor, and such number of officers, clerks, messengers, and other persons as they may, with the consent of the Treasury, deem necessary, and may remove any person so appointed or employed.

The Loan Commissioners may from time to time assign to any person so appointed or employed by them such salary or remuneration as they may, with the sanction of the Treasury, think proper.

A person appointed or employed by the Loan Commissioners, in pursuance of this section, shall not receive any remuneration in respect of such appointment or employment or otherwise in respect of the execution of his duties under this Act, except such as may be assigned to him in pursuance of this section.

(*m*) Three. See the Public Works Loans Act, 1899, s. 6.

Every such salary or remuneration, and all expenses incurred by the Loan Commissioners in the execution of this Act, shall be paid out of moneys provided by Parliament.

Securities given to and property vested in secretary to vest in his successor.

7. Where under this or any other Act or any conveyance obligation, or security, any real or personal property, or any estate or interest therein, or any chose in action, has been or may be vested in, conveyed, made payable, or secured to the secretary of the Loan Commissioners for the time being as such secretary, and in respect of his office, all such real and personal property, estate and interest, and chose in action whatsoever, upon the death, removal, or resignation of any such secretary from time to time, and as often as the same happens and the appointment of a successor takes place, shall (subject to the same trusts, and equities, if any, as the same were before respectively subject to) vest in such succeeding secretary, by force of this Act and without any act or deed whatever to be done by the secretary dying, resigning or removed, or by the heirs, executors, or administrators of such secretary, or by any person or persons claiming under him, them, or any of them, and notwithstanding the same may have been expressed to be vested in, conveyed, made payable to or secured to such secretary, his heirs, executors, administrators, and assigns, or any of them; and shall be proceeded upon in the name of any succeeding secretary, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such secretary dying, resigning, or removed.

Where the secretary of the Loan Commissioners is a party to any action, suit, or other legal proceeding, such secretary acting under the direction of the Commissioners shall be deemed to represent the Crown, so far as regards the interest of the Crown in any loan granted under this Act or any money due under a security for any such loan, and it shall not be necessary to make the Crown or any other person on behalf of the Crown, a party to such action, suit, or proceeding, in respect of such interest as aforesaid.

Execution of conveyances, leases, etc. by secretary on behalf of Commissioners.

8. All conveyances, leases, mortgages, releases, arrangements, and things which the Loan Commissioners are authorised by this Act to grant, execute, make, or concur in, and all powers, acts, and things which the Loan Commissioners are authorised by this Act to exercise, do, or concur in, in relation to any mortgaged property or rate, may be granted, executed, made, concurred in, exercised, and done by their secretary for the time being under their direction, and when so granted, executed, made, concurred in, exercised, and done by such secretary, shall be deemed to have been granted, executed, made, concurred in, exercised, and done by him under the direction of the Commissioners, unless the contrary is shown by some person interested in contesting the validity thereof.

Any property, chose in action, estate, interest, powers, authorities, and privileges vested in or exerciseable by the secretary of the Commissioners in pursuance of this Act shall be dealt with and exercised by him under the direction of the Commissioners and not otherwise.

OBJECTS, TERMS, AND DURATION OF LOAN.

Loans for public works.

9. The Loan Commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans for the purpose of any of the works mentioned in the First Schedule to this Act, to any person having power under an Act of Parliament or otherwise to borrow for such purpose (*n*).

(*n*) The schedule includes all, or nearly all, the purposes for which a sanitary authority may borrow money. By the Public Works Loans Act, 1896, s. 2, *post*, p. 1901, there shall be added to the works for which the Commissioners may lend, any work for which

The Loan Commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work for which the loan is asked would be such a benefit to the public as to justify a loan out of public money, having regard to the amount of money placed at their disposal by Parliament (*o*).

Interest on loan

10. Every loan granted under this Act shall bear interest at a rate not less than the rate authorised by a special Act relating to such loan (*p*), or if no rate be so authorised, not less than five per cent. per annum: Provided that when the aggregate amount of principal moneys due by any harbour authority to the Commissioners under the Harbours and Passing Tolls, etc. Act, 1861, exceeds one hundred thousand pounds, the rate of interest on such excess shall be three-and-a-half per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

24 & 25 Vict. c. 47.

Term of years for repayment of loan.

11. Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan, not exceeding the period authorised by a special Act relating to such loan, or if no period be so authorised not exceeding *twenty* (*q*) years.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorised by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners (*r*).

The Loan Commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period should be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

the council of a county, borough, district, or parish are authorised to borrow. By the Small Dwellings Acquisition Act, 1899, s. 9 (7), *post*, p. 1964, the Commissioners may lend money to a local authority for the purposes of that Act. Separate accounts must be kept by a local authority of all loans from the Commissioners on the security of the rates. See the Public Works Loans Act, 1882, s. 8, *post*, p. 1763.

(*o*) See the notes to s. 243 of the P. H. A., 1875, *ante*, p. 537.

(*p*) See the P. H. A., 1875, s. 243, *ante*, p. 537, and the notes thereto. See also the Housing of the Working Classes Act, 1890, s. 83, *ante*, p. 926. In the application of the above section to loans granted after June 28th, 1892, 4 per cent. is to be read instead of 5 per cent. See the Public Works Loans Act, 1892, s. 2, *post*, p. 1879.

(*q*) This maximum period is now fifty years: see Public Works Loans Act, 1911, s. 4, *post*, p. 2137; it had previously been reduced to thirty by the Public Works Loans Act, 1898, s. 5.

(*r*) See note (*p*), *supra*.

Security for loans.

12. The Loan Commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorised by the special Act relating to the loan, or if none is so authorised, of a mortgage of property or of a rate, or of both property and a rate, and (save as hereinafter mentioned) of personal security.

The Loan Commissioners may, if they think fit, dispense with personal security in any case in which in their opinion the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period.

FUNDS FOR LOANS.

13. [*Annual estimate of amounts required.*] (*s*)

14. [*Treasury to issue sums required for loans.*] (*t*)

Borrowing for the purpose of raising money.

15. . . . The annuities created in pursuance of this section, and the principal moneys borrowed in pursuance of this section (otherwise than by the issue of Exchequer bonds) and all interest from time to time due thereon, or on Exchequer bonds issued under this section (not exceeding the rate of five per cent. per annum) shall be charged upon and be payable out of the Consolidated Fund, or out of the growing produce thereof, at such times in each year as may be fixed by the Treasury.

The principal of any Exchequer bonds issued under this section shall be paid out of moneys provided by Parliament.

. . . . .

The said annuities shall, in manner directed by the warrant, be consolidated in the said books, if terminable, with annuities payable at the same date, and, if permanent, with annuities at the same rate of interest, and payable at the same date, and shall be transferable in the said books in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenor of those enactments.

16. [*Money issued by Treasury to be issued to National Debt Commissioners.*] (*u*)

17. [*Sums repaid to be paid into the Exchequer.*] (*u*)

RECOVERY OF LOANS.

Charge on property and priority of loan by the Commissioners.

18. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the date of the mortgage shall be charged with the payment to the use of her Majesty of the loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, over every other debt, mortgage, or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the

(*s*) This section is repealed by the Public Works Loans Act, 1882—see note (*c*), *post*, p. 1763.

(*t*) This section and part of s. 15 were repealed by the National Debt and Local Loans Act, 1887, s. 21. By that Act the National Debt Commissioners were required to issue to the Public Works Loan Commissioners the amount authorised by Parliament for advances to be made by the Loan Commissioners, and these advances are in the Act included under the expression "local loans." For this purpose the Act further established the Local Loans Fund under the control of the National Debt Commissioners, and out of this fund all advances are now made for the purpose of local loans.

(*u*) Sections 16 and 17 were repealed by the National Debt and Local Loans Act, 1887, s. 21.

Commissioners and secured by a mortgage of the property executed to a person who is entitled as a bonâ fide creditor to the repayment thereof with interest.

Provided that if there is more than one such creditor and not less than four-fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors, in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the Commissioners and to the said charge thereof, and to the security for the same.

Nothing in any special Act (*x*), and no rule of law or custom, shall affect the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act.

Charges on rate of loan and loan not to be repudiated by locality having had the benefit of it.

19. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any rate (whether with or without any other security) such rate from and after the date of the mortgage shall be charged with the payment to the use of her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the Commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted ; and in particular the Commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging such rate, have the same power of making and levying and enforcing the making or levying the said rate for the purpose of repaying such loan and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had had full power to make, levy, and mortgage such rate.

Securities to be taken in name of secretary.

20. All securities for any loan granted by the Loan Commissioners in pursuance of this Act may be given to the secretary of the Commissioners on their behalf. Every such security is in this Act referred to as a security given to the Commissioners.

Taking possession by Commissioners of property on default of payment.

21. Where a mortgage of property has been given to secure any loan granted by the Loan Commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the Commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things ; namely,—

(1) Take possession of the mortgaged property, or any part thereof ; and

(2) Grant any lease of the mortgaged property, or any part thereof, for such term and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both ; and

(3) Sell or mortgage the mortgaged property or any part thereof.

(*x*) The special Act includes any Act relating to any person having power to borrow from the Commissioners. See the Public Works Loans (Money) Act, 1876, s. 7, *post*, p. 1627.

Powers of Commissioners when in possession.

22. The Loan Commissioners, when authorised to take possession of any mortgaged property, may take possession either by themselves or by any person appointed by them (whether such person is interested in the mortgaged property or not), and upon possession of any mortgaged property being so taken,—

(1) All the estate, right, interest, powers, authorities, and privileges, of what nature or kind soever, which were at the time of the making of the mortgage or may for the time being be vested in or exerciseable by the mortgagor or any person claiming through or under the mortgagor, either in relation to the property or necessary for carrying on and managing the same, shall become vested in the secretary of the Commissioners ; and

(2) The Commissioners may by themselves or any person appointed as aforesaid manage and carry on the property, and receive the revenue arising therefrom, or in any way receivable in respect thereof, or otherwise, in pursuance of the mortgage, and exercise all or any of the powers and authorities vested in the secretary by this Act ; and

(3) The Commissioners or their secretary or such person as aforesaid shall not be liable for the repairs or maintenance of the mortgaged property, but may apply any moneys received in respect thereof or raised from any rate towards such repairs or maintenance to such extent as the Commissioners may think expedient ; and

(4) The Commissioners may, with the consent of the Treasury, advance out of moneys at their disposal under this Act sums for the completion, repair, improvement, or security of the mortgaged property, and every such sum shall be deemed and shall be a loan secured on the property and repayable with the like interest (*y*) from the time of the advance, and by the like person, and shall have the like priority and be recoverable in the like manner as if it were part of the original loan secured by the said mortgage ; and

(5) If the revenue received from or in respect of the property is insufficient to keep down the current expenses of working, maintaining, and repairing the same, together with the instalments of principal and the interest for the time being due on the mortgage, and no rate or no sufficient rate can be levied to meet the deficiency, the Commissioners may, with the consent of the Treasury, destroy or cause to be destroyed, or (if they sell the same) authorise the purchaser with the like consent to destroy the same, and sell or authorise the purchaser to sell the materials thereof and other the articles, goods, and effects belonging thereto, and neither the Commissioners, nor their secretary, nor the purchaser so authorised, nor his representatives, shall be liable in damages or otherwise to any person whomsoever for such destruction ; and the provisions of this Act with respect to the sale of any mortgaged property shall apply to any sale under this section ; and

(6) Possession under this Act may be relinquished at such time and in such manner and upon such terms and conditions as the Commissioners think fit, and upon such relinquishment all powers, authorities, and privileges which on the taking of possession become vested in the secretary of the Commissioners shall, so far as they are not reserved, revert to and become vested in the person in whom the same would have been vested if possession had not been taken, but the Commissioners may, if they think fit, on the relinquishment of possession,

(*y*) Not less than 5 per cent. See the Public Works Loans Act, 1881, s. 7, *post*, p. 1699.

reserve any of the said powers, authorities, and privileges, with a view to the payment of any sum due to them:

(7) Every such relinquishment of possession of any mortgaged property shall be without prejudice to the power of again taking possession thereof under the provisions of this Act.

23. Where a loan made by the Commissioners is secured by the mortgage of a rate (whether with or without any other security), and the Commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the Commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the Commissioners shall have and may exercise the same power as the mortgagor of making and levying the rate mortgaged, and for that purpose the Commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the Commissioners, shall have and may exercise the same powers, authorities, and duties as if he had been appointed by the mortgagor. Powers in relation to rate where default made.

The Commissioners, in making an estimate of the rate to be levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs, charges, and expenses, including remuneration to any officer or other person employed, incurred by the Commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the Commissioners shall be paid by them to the mortgagor.

The Commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revest in the mortgagor, subject to the said reservations and conditions.

24. When the Loan Commissioners have taken possession of any property under this Act, or exercised the powers conferred by this Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys which, but for their wilful neglect or default, they or he might have received when so in possession or exercising such powers, or for any moneys other than those which have actually come to their or his hands. Liability of Commissioners after taking possession or in default of payment.

25. Where the Loan Commissioners have power to sell or mortgage, they shall have power to sell or mortgage either together or in parcels, by public auction or private contract, and subject to such conditions as to title or evidence of title or otherwise as the Commissioners may think proper. Sale and mortgage by Commissioners of mortgaged premises.

They may also buy in at any auction and rescind any contract for sale or mortgage, and resell or remortgage, without being responsible for any loss occasioned thereby.

Where a sale cannot be made in the ordinary way for a sum equal to the amount remaining due under the mortgage, the Loan Commissioners may, if they think fit, sell in such manner and subject to such conditions, stipulations, and agreements as they may think expedient for the purpose of ensuring the completion or carrying on of the work comprised in such mortgage by the purchaser thereof, with a view to the public good or general benefit, or for any other purpose, notwithstanding such conditions, stipulations, and agreements may be prejudicial to the sale, or may not be beneficial to the persons interested in the equity of redemption in the property.

The Loan Commissioners may for the purpose of any sale or mortgage execute all such agreements, conveyances, and instruments as they may think fit.

Purchaser not liable to see to the validity of sale or application of money.

26. Every sale or mortgage made by the Commissioners or their secretary, and purporting to be made in pursuance of this Act, shall, so far as regards the interest of the purchaser and mortgagee, be deemed to be valid, and the purchaser or mortgagee shall not be bound to see or inquire whether the sale or mortgage is authorised, nor in the case of a mortgage whether the money raised is required to be raised, nor as to the necessity or expediency of or authority for making the conditions, stipulations, or agreements subject to which the sale or mortgage was made, nor otherwise as to the propriety or regularity of such sale or mortgage, nor be affected by express notice as to any matters into which he is not bound to see or inquire.

The receipt in writing of the Bank of England, or one of their cashiers or other proper officer for the purpose of the Bank of England, or other prescribed receipt, shall be a full discharge for the money paid on the sale or mortgage, and the person paying the same shall not be bound to see to the application of such money, or be liable or in any manner accountable for the misapplication or non-application thereof.

Terms of lease, sale, or mortgage.

27. Any lease, mortgage, conveyance (*z*), or other disposition made by the secretary of the Commissioners under this Act of any mortgaged property may be in the prescribed form, and shall convey to the person in whose favour such lease, mortgage, conveyance, or other disposition is made, and according to the terms thereof, all or any part of the estate, right, interest, powers, authorities, and privileges, which under the mortgage and this Act are vested in or capable of being exercised by the Loan Commissioners, or their secretary, either before or after possession taken, and the same shall thereupon be vested in and may be exercised and put in force by such person accordingly.

Nothing in this Act shall operate to invalidate or affect the rights of any person entitled bonâ fide to any debt, estate, or interest having priority over or ranking pari passu with the loan granted by the Commissioners, or the security for such loan, or the rights of any lessee under any lease made either prior to such security or with the concurrence of the Commissioners.

Application of money arising on taking possession, sale, mortgage, etc. by Commissioners.

28. Any money arising from the taking possession, lease, sale, mortgage, or other disposition under this Act by or under the direction of the Loan Commissioners of any mortgaged property shall be applied first in discharge of all costs, charges, and expenses incurred by or under the direction of the Commissioners in respect thereof, or otherwise by reason of the default in payment, and secondly in discharge of the whole of the principal of the loan secured by the mortgage and for the time being unpaid (notwithstanding that the same or any instalment thereof may not have become actually due), and in discharge of all interest accrued due on such principal, and of all other sums (if any) due under the mortgage.

The surplus (if any) of such money either shall be paid to the mortgagor or other person or persons entitled thereto, or, if the Commissioners think fit, shall be paid by the secretary of the Commissioners into the Court of Chancery in England in like manner as if he were a trustee of such money for the persons entitled thereto, and the court may make such orders for the payment and distribution of such money to or among those persons as may from time to time seem to the court just.

(*z*) See the definition of a conveyance in s. 51, *post*, p. 1624.

29. The Loan Commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due; and may release or convey the mortgaged property or rate to the person paying the same or as he may direct, upon such terms and conditions and in such manner and form as the Commissioners may think expedient. Payment of loan before it is due, and transfer of security for al or part of loan.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities, powers, and authorities as the Commissioners or their secretary were entitled to, either subject to or with priority over or concurrently with any priorities, powers, and authorities reserved to the Commissioners by the conveyance.

The Commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

30. Upon all money due under a mortgage under this Act being fully paid the Commissioners shall, when required, give in the prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the Commissioners to be necessary, and upon such receipt being given the mortgaged rate shall be released from the charge and the mortgaged property, or the part thereof not sold or disposed of under this Act, shall (unless the Commissioners, on the request and at the expense of the person paying the said money, make any other disposition thereof), revest in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease, mortgage, or other act previously made or done by or under the direction of the Commissioners. Discharge of security and revesting of property on repayment of loan.

31. Where an individual liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or insolvent, or enters into any composition or arrangement with his creditors, or has his affairs liquidated by arrangement, or takes the benefit of, or becomes subject to the provisions of any Act passed for the relief of persons in debt, or for enabling the property of such persons to be distributed among their creditors, or where any company liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or is wound up, the whole of such loan shall become due immediately, notwithstanding that the date for the payment thereof or part thereof has not arrived, unless in the case of a surety the Commissioners think fit to accept some other surety. Bankruptcy debtor.

32. Every security given under this Act may be in such form as may be prescribed (*a*), and the fact of the secretary of the Loan Commissioners being a party thereto shall be conclusive evidence that the same is in the prescribed form, and every such security shall be valid and effectual to pass all the estate, right, and interest purporting to be passed thereunder by the parties executing the same, subject to the provisions of this Act. Form of mortgage.

33. Every sum payable under any security made in pursuance of this Act shall be made payable to the use of her Majesty, and may be recovered as a specialty debt due to the Crown, in like manner as if the security had been made in the form provided by the Act of the thirty-third year of the reign of Henry the Eighth, chapter thirty-nine; but no person shall be liable for any larger sum than that which he is expressed to be bound to pay. Recovery of debt on personal security.

(*a*) See the definition in s. 51, *post*, p. 1624.

Every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of this Act) or under the security for such loan, shall be compounded for or released only under the authority of Parliament in each case (*b*).

The Loan Commissioners may issue a warrant to the proper officer forthwith to enforce payment of such debt to the Crown as aforesaid, and if necessary to enter satisfaction therefor, and shall have the control over any proceedings taken to enforce such debt, and such proceedings shall not be discontinued, quashed, or abated without the written authority of the Loan Commissioners.

The Court of Exchequer, or other competent court, or any judge thereof, may, upon the production of the said warrant, direct an immediate writ of extent, or of diem clausit extremum, to issue without any writ of scire facias or any affidavit or other proof of the cause of the proceeding.

Nothing in this Act shall render it the duty of the Loan Commissioners to issue such warrant or to register such writ or debt, unless they are of opinion that it is necessary for the purpose of securing the payment of the debt, or that otherwise under the particular circumstances it is expedient so to do.

Recovery of loan after the expiration of term for repayment.

34. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the Loan Commissioners of recovering or enforcing payment of any sum due in respect of such loan (*c*).

SUPPLEMENTAL PROVISIONS AS TO LOANS AND SECURITIES.

Security for completion of works partly finished or not commenced.

35. Where the Commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to her Majesty or otherwise, take such security for the application of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest to the public.

Examination as to proper application of moneys lent.

36. Where the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section, and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor (*d*).

(*b*) The Commissioners may reduce the interest on any loan made before this Act to any rate not less than 4 per cent., but this provision is not to take away or abridge the power of the Commissioners to reduce the interest on any loan under the P. H. A., 1875, s. 243 (*ante*, p. 537). See the Public Works Loans (Money) Act, 1876, s. 6, *post*, p. 1627.

(*c*) This provision appears to meet a difficulty such as occurred in *R.* v. *Wigan*, *ante*, p. 528.

(*d*) This section is amended by the Public Works Loans Act, 1878, s. 4 (giving power to the Commissioners to enforce the proper application of the loans by *mandamus*), *post*, p. 1672, and by the Public Works Loans Act, 1881, ss. 8, 9 (giving power to make and enforce orders as to expenses of inquiries into the application of loans and providing for the application of unapplied balances), *post*, p. 1699. For the powers of a poor law inspector, see the Poor Law Board Act, 1847, ss. 20, 21, and notes to s. 296 of the P. H. A., 1875, *ante*, p. 625.

37. The Treasury may, on the recommendation of the Loan Commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the Commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorise.

Suspension of payment of principal and interest.

38. The Loan Commissioners may, subject to the prescribed regulations if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the substituted security shall be of the character which the Commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan.

Change of security.

39. The Loan Commissioners may concur in any lease, conveyance, release, or other disposition of any property mortgaged under this Act, or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure.

Concurrence by Commissioners in leases, sales, etc. of mortgaged property.

Special Provisions as to Borrowers.

40. The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners in accordance with this Act (*e*).

Power to various authorities to mortgage and levy rates.

The council of any borough may borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the borough rate to the Loan Commissioners in accordance with this Act (*f*).

The said justices and council respectively (*f*) shall have power to give the mortgage in such manner and form as the Loan Commissioners may direct.

Miscellaneous.

41. The Loan Commissioners may from time to time make regulations for carrying into effect this Act, and in particular with respect to the quorum and proceedings of the Commissioners and the authentication of documents

Regulations by Commissioners (*g*).

(*e*) County loans are now raised by the county council under s. 69 of the L. G. A., 1888, and securities for loans previously raised by the justices are to be discharged by the county council under s. 122 (1) of the same Act.

(*f*) This paragraph and the words "and council respectively," are repealed as to boroughs within the Municipal Corporations Act, 1882 (see Sched. I., Part 2, of that Act), because other provision is now made under s. 120 of that Act.

(*g*) Regulations have been made under this section, and are as follows :

1. All words used in these regulations shall have the same meaning as is assigned to them

made or issued or directions given or acts done by them, and with respect to loans under this Act and applications therefor, and annual and quarterly statements of the amounts required to be borrowed, and the information to be given and conditions to be complied with by the applicants, and with respect to the forms to be used, including the forms of the securities, and with

by the " Public Works Loans Act, 1875," which Act is hereinafter referred to as "the Act."

2. The Loan Commissioners shall elect a chairman and deputy chairman ; and three Commissioners shall form a quorum.

3. If at any meeting the chairman is not present, the deputy chairman shall be the chairman of the meeting, and if neither the chairman nor deputy chairman be present, then the Commissioners present shall choose one of their number to be the chairman of such meeting.

4. Meetings of the Commissioners shall be held as often as the business to be transacted may be found to require, and shall be convened by notice from the secretary.

5. All questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

6. A book, to be called the minute book, shall be kept, in which applications for loans and minutes of the proceedings and resolutions of the Commissioners shall be recorded and such other books shall be kept as the Commissioners may think necessary (*gg*).

* * * * *

9. Upon delivery to the borrower or his nominee of the certificate referred to in the last preceding regulation, such borrower or nominee shall pay at the office of the Loan Commissioners the amount of the fees referred to in Regulation No. 7 (*gg*) as payable on any loan or instalment of a loan for which such certificate shall have been issued, together with the amount of stamp duty thereon, and the further amount, if any, of disbursements in respect thereof ; and the receipt for any such amounts shall be signed by the officer in charge of the accounts, or in his absence by such persons as may be nominated by the secretary.

10. All moneys payable towards the discharge of advances made by the Loan Commissioners and in payment of interest thereon, shall be paid by the borrower or his agent into the Bank of England to the credit of "The Public Works Loans Account," being the account directed by the Treasury under section 43, and such payments shall be made under authority to be obtained at the office of the Loan Commissioners empowering the Bank of England to receive the sum therein mentioned, and the receipt of the Bank of England for such payment shall be obtained at the office of the Loan Commissioners on the succeeding day.

11. Any receipt required to be given by or on behalf of the Loan Commissioners (other than for money paid into the Bank of England under Regulation No. 10, and for sums payable under Regulation No. 9), and any receipt and further discharge, if any, to be given when all money due under a mortgage has been fully paid, shall be so given by the secretary.

12. Any notice required by section 23 of the Act to be published shall be published once in a local paper circulating in the district where the rate is intended to be levied.

13. All documents of the Loan Commissioners not required to be signed by them shall, if purporting to be signed by the secretary, be deemed, until the contrary is proved, to be made or issued by the Loan Commissioners ; and all directions given or acts done by the secretary shall be deemed, until the contrary is proved, to be given or done by the Loan Commissioners ; and all documents may be proved by the production of a copy or extract purporting to be signed by the secretary to be true.

For the purposes of this regulation no proof shall be required of the handwriting or official position of the person purporting to be the secretary.

14. The Loan Commissioners, regard being had to section 36 of the Act, shall, whenever they advance a loan on the security of a rate, inform the Local Government Board of such advance having been made, and of the purposes thereof.

15. The Loan Commissioners shall cause to be prepared an annual statement to the 31st of March in each year of the amounts issued to them, for the purpose of making advances by way of loan under various Acts, the amounts advanced by them, the amounts paid into the Exchequer in repayment of such advances and for interest thereon, and the balances outstanding, and such statement shall be included in the annual report referred to in section 5, sub-section (3).

16. To enable intending borrowers to make the statement referred to in section 13 of the Act, the Loan Commissioners shall cause a form of statement to be prepared and issued to such intending borrowers on their written notification of intention to borrow, which form, duly filled up, must be returned to the Loan Commissioners on or before the 31st December in each year.

The Loan Commissioners may, provided such notification be received at their office on or

(*gg*) Regulations 7 and 8 are respectively repealed by the Regulations dated 16th August, 1907, and 16th September, 1912, *post*.

respect to any fees or sums to be paid by the applicants or by other persons dealing with such Commissioners, and with respect to the relations between such Commissioners and the National Debt Commissioners and the Bank of England.

Every such regulation shall be submitted for the approval of the Treasury, and as approved by them with such modifications and additions as they

before the said 31st December, extend the period for return of such form of statement to any day not later than the 14th January in each year.

17. The assistant secretary of the Loan Commissioners shall, under their directions, be competent to perform any act authorised by the above regulations to be performed by the secretary.

W. W. Willink,
Secretary.

Public Works Loans Board,
1*st April*, 1876.

The Lords Commissioners of her Majesty's Treasury approve these regulations, in conformity with the 41st section of the Act, 38 & 39 Vict. c. 89.

R. R. W. Lingen.

13*th April*, 1876.

Further Regulations made by the Public Works Loan Commissioners under the Public Works Loans Act, 1875 (*hh*).

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2. For the purpose of making payments to the Commissioners for the Reduction of the National Debt on account of principal or interest in respect of moneys advanced by them to the Loan Commissioners under the Public Works Loans Act, 1879, the Bank of England shall transfer, in accordance with section 7 of the said Act, from the Public Works Loans Account to the credit of the National Debt Commissioners at the Bank of England such sums as may from time to time be directed by the Loan Commissioners, and every such direction shall be signed by their secretary or assistant secretary.

W. W. Willink,
Secretary.

Public Works Loans Board,
18*th December*, 1879.

The Lords Commissioners of her Majesty's Treasury approve of these regulations in conformity with the 41st section of the Act, 38 & 39 Vict. c. 89.

R. R. W. Lingen.

Treasury Chambers,
2*nd January*, 1880.

Further Regulations made by the Public Works Loan Commissioners for carrying into effect the Public Works Loans Act, 1875.

1. The fees or sums to be paid by the applicants, pursuant to section 41 of the Public Works Loans Act, 1875, in respect of loans on rates shall not exceed the following sums, viz. :—

For the 1st £1,000 : 20*s.* for every £100 of such loan.
For the 2nd £1,000 : 15*s.* for every £100 of such loan.
For the 3rd and 4th £1,000 : 10*s.* for every £100 of such loan.
For the 5th to the 10th £1,000 : 5*s.* for every £100 of such loan.
For each subsequent £1,000 up to £100,000 : 2*s.* 6*d.* for every £100 of such loan.
Loans exceeding £100,000 to be charged as £100,000.

Where a loan is advanced by instalments secured by one deed, there shall be paid in respect of each advance after the first, an additional fee of £1 if the amount of the advance does not exceed £100, and an additional fee of £2 if the amount of the advance exceeds £100.

For the purpose of this Regulation, the total amount to be advanced under one security deed shall be considered as a loan ; and fractional parts of £100 shall be considered as £100.

In addition to the above fees, the applicants shall pay the stamp duty, counsel's fees,

(*hh*) Regulation No. 1 was repealed by the Regulations dated 16th September, 1912, *post*, p. 1622.

think fit, shall be published in the London Gazette, and when so published shall have effect as if it was enacted in this Act.

Every such regulation shall be laid before both Houses of Parliament as soon as may be after the making thereof if Parliament be then sitting, or if Parliament be not then sitting, within one month after the then next meeting of Parliament. Every regulation, purporting to be made in pursuance of this section, shall after the expiration of six months after its publication in the London Gazette be deemed to have been duly made and to have been within the powers of this Act.

Regulations made under this section may be from time to time rescinded, altered, and added to in like manner as the original regulations.

and other disbursements incurred by the Loan Commissioners in respect of the several applications.

In respect of all business, not being a loan on rates, the fees or sums payable shall be fixed by the Commissioners, regard being had to each particular case.

2. The above regulation shall come into force on the 1st day of September, 1907, and as from such date the Regulations made by the Public Works Loan Commissioners on the 19th day of January, 1882, shall be rescinded.

R. PHILPOT,
Secretary.

Public Works Loan Board,
16*th August*, 1907.

The Lords Commissioners of his Majesty's Treasury approve these Regulations in conformity with the 41st section of the Act, 38 & 39 Vict. c. 89.

E. W. HAMILTON,
Secretary.

Treasury Chambers,
August, 1907.

FURTHER REGULATIONS, DATED SEPTEMBER 16TH, 1912, MADE BY THE PUBLIC WORKS LOAN COMMISSIONERS, FOR CARRYING INTO EFFECT THE PUBLIC WORKS LOANS ACT, 1875.

(1.) In place of the 8th of the regulations made on the 1st April, 1876, and the 1st of the regulations made on the 2nd January, 1880, under the Public Works Loans Act, 1875, the following regulations shall be in force, viz. :—When the Loan Commissioners shall have determined upon any amount of money to be advanced by way of loan pursuant to section 9 of the Public Works Loans Act, 1875, the said Commissioners or any two or more of them, shall forthwith certify such amount to the Commissioners for the Reduction of the National Debt for the time being, and at the foot of every such certificate the secretary shall state the name or names of the person or persons by whom such certificate is to be presented to the said Commissioners for the Reduction of the National Debt, and upon every such certificate being lodged at the office of the last-mentioned Commissioners for such number of days as may from time to time be agreed upon between the same Commissioners and the Loan Commissioners, the Comptroller-General, or other proper officer of the said Commissioners, shall sign an order appended to such certificate for the payment of the sum mentioned therein to the person or persons named at the foot of the certificate, or to one of such persons, which order shall be addressed to the cashiers of the Governor and Company of the Bank of England; and the signatures of such person or persons, jointly or severally, shall be a sufficient discharge to the said Commissioners for the Reduction of the National Debt and to the said Governor and Company respectively, provided the total amount directed to be paid by such certificate or certificates respectively shall not at any time exceed the amount for the time being standing to the credit of the account referred to in section 16 of the Act.

(2.) The above regulation shall come into force on the 16th day of September, 1912, and as from such date the said 8th and 1st regulations shall be rescinded.

R. PHILPOT,
Secretary.

Public Works Loan Board,
16*th September*, 1912.

The Lords Commissioners of his Majesty's Treasury approve these regulations in conformity with the 41st section of the Act, 38 & 39 Vict c. 89.

T. L. HEATH,
Assistant Secretary.

Treasury Chambers,
16*th September*, 1912.

42. [*Payment of fees and other sums into the Exchequer.*] (*h*)

43. The Loan Commissioners shall keep at the Bank of England such account, and under such title as the Treasury may from time to time direct, and every such account shall be deemed to be a public account. Accounts.

Such accounts as the Treasury may from time to time direct of all moneys issued from or payable to the Consolidated Fund in pursuance of this Act during every financial year, and of all transactions under this Act during that year, including all sums due for the time being from any person in respect of any loan granted by the Loan Commissioners either before or after the passing of this Act, shall be kept by the National Debt Commissioners and the Loan Commissioners respectively, and such other persons (if any), and be audited by the Comptroller and Auditor-General in such manner as the Treasury may from time to time direct.

44. Any person who, . . . (*i*) for the purpose of obtaining a loan under this Act, wilfully gives information to such Commissioners which is false in any material particular, shall be guilty of perjury. Perjury.

45. The warrant of the Treasury issued under the authority of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed to be done for the purposes of this Act, and copies of any such warrant relating to the borrowing of money shall be laid before both Houses of Parliament, within one month of the date thereof, if Parliament be then sitting, and if not within one month after the then next meeting of Parliament. Authority, and laying before Parliament Treasury warrants.

46. The receipt in writing of the Bank of England, or one of their cashiers or other the proper officer for the purpose of the Bank of England, and any other prescribed receipt for any money paid in discharge of the principal or interest of any loan granted under this Act, or of any sum due under any security made under this Act or otherwise payable to or by the direction of the Loan Commissioners or their secretary, shall be a complete discharge to the person paying the same. Receipt for money payable on account of loan, etc.

47. Notices, directions, orders, and documents required by this Act, or by any regulation made under this Act, to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice, direction, order, or document was prepaid, and properly addressed, and put into the post. Notices may be served by post.

48. Notices, and documents required by this Act, or by any regulation made under this Act, to be served on the Loan Commissioners, may be so served by serving the same on their secretary, or by sending the same addressed to or delivering the same at the office of the Commissioners. Notices to and by Commissioners.

Notices and documents required for the purposes of this Act or of any regulation made thereunder, to be served by or on the Loan Commissioners, or to be made or issued by the Loan Commissioners, shall be in writing or in print, or partly in writing and partly in print.

49. The Schedules to this Act shall be construed and have effect as part of this Act. Effect of schedules.

(*h*) Repealed by the S. L. R. A., 1883.
(*i*) Some words here repealed by the Perjury Act, 1911.

Application of Act to loans under special Acts.

50. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the Loan Commissioners shall, notwithstanding any provision in such special Act (*k*) and any rule of law or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act; and every such loan, together with the security for the same, shall have the priority and be subject to the powers, authorities, and remedies mentioned in this Act; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act.

Definitions.

51. In this Act, if not inconsistent with the context—

The expression "person" includes a body of persons, whether corporate or unincorporate (*l*):

. . . . .

The expression "financial year" means the year ending the thirty-first day of March:

The expression "prescribed" means prescribed by the regulations made under this Act with the approval of the Treasury:

The expression "special Act" means any Act passed before the passing of this Act which authorises the Loan Commissioners to lend money for the purposes of any work mentioned in the First Schedule to this Act and any Act passed after the passing of this Act, which authorises the Loan Commissioners to lend money for any purpose (*k*):

The expression "security" includes a mortgage:

The expression "mortgage" includes a charge and any instrument in the nature of a mortgage or charge, and in Scotland any heritable security:

The expression "conveyance" includes any grant, assignment, transfer, or other disposition or assurance; and the expression "convey" shall be construed accordingly:

The expression "rate" means a rate, cess, or assessment the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, as before defined, and the making and levying of a rate includes the issue and enforcement of any such precept, certificate, or instrument as aforesaid, and expressions relating to the making and levy of a rate shall be construed accordingly:

Any toll, due, rent, imposition, and other sum not being a rate as above defined shall be deemed to be property for the purposes of this Act.

All references to a mortgagor or borrower shall, if need be, be deemed to include a reference to the successors heirs executors administrators and assigns of, or other presons claiming through or under such mortgagor or borrower.

Temporary Provisions and Repeal.

52. [*First commissioners.*] (*m*)

53. [*Existing officers of commissioners.*] (*n*)

54. [*Sending of statements, etc., before commencement of Act.*] (*m*)

(*k*) As to the meaning of this term, see s. 18, note (*x*), *ante*, p. 1613.

(*l*) Definitions of "the Treasury," "National Debt Commissioners," and "Bank of England," are here repealed by the S. L. R. (No. 2) A., 1893, their places being now supplied by the definitions enacted by the Interpretation Act, 1889, s. 12.

(*m*) Repealed by the S. L. R. A., 1883.

(*n*) Repealed by the S. L. R. (No. 2) A., 1893.

55. A reference in any Act to any enactment hereby repealed, or to the commissioners for the execution of any Act hereby repealed, shall, so far as is consistent with the tenor thereof, be deemed to refer to the corresponding enactment in this Act and to the Public Works Loan Commissioners under this Act. Reference in Acts to epealed Acts.

56. Save as otherwise provided by this Act this Act shall apply only to loans granted and securities made after the commencement of this Act. Saving for ans and transactions under epealed Acts.

The Loan Commissioners shall have the same power of making further advances on any mortgages made before the commencement of this Act and intended to secure more than the sum which has actually been advanced thereon as they would have had under the Acts repealed by this Act if they had not been repealed, but such advances shall be made out of money issued under this Act.

The Loan Commissioners, on granting any new loan to persons by whom a loan granted before the commencement of this Act is still owing, may make it a condition of the grant of such new loan that the old loan shall be deemed to have been granted in pursuance of this Act, and on such condition being accepted the old loan shall be deemed to be a loan under this Act.

For the purpose of any loans granted and securities made before the commencement of this Act, the Loan Commissioners under this Act and their secretary and other officers for the time being shall be deemed to be the same commissioners, secretary, and officers as the commissioners, secretary, and officers under the Acts in pursuance of which such loan was granted and securities made; and all securities and documents relating to such commissioners, secretary and officers shall be construed accordingly.

57. (*o*) . . . so much of any . . . enactment as authorises any loan by the Public Works Loan Commissioners for the purpose of any work other than a work mentioned in the First Schedule to this Act, or as is otherwise inconsistent with this Act, is hereby repealed . . . Repeal of Acts.

Provided that—

(1) The repeal of an enactment by this Act shall not affect—

. . . . .

(b) Any power to make or levy rates, or any other power capable of being exercised for the purpose of enabling or compelling the repayment of any money due on account of any loan granted by the Public Works Loan Commissioners before the commencement of this Act, whether the same or any part thereof has been actually advanced before or after such commencement.

. . . . .

SCHEDULES.

FIRST SCHEDULE (*p*). [Sect. 9.]

WORKS FOR THE PURPOSE OF WHICH THE COMMISSIONERS MAY LEND MONEY.

Baths and washhouses provided by local authorities.

Burial grounds provided by burial boards . . .

Conservation or improvement of rivers or main drainage (*q*).

Docks.

Harbours and piers, and any work for which the Public Works Loan Commissioners are authorised to lend by section 3 of the Harbours and Passing Tolls, etc. Act, 1861. 24 & 25 Vict. c. 47.

(*o*) This section is printed with the omission of parts repealed by the S. L. R. (No. 2) A., 1893, and the S. L. R. A., 1883.

(*p*) Parts of this Schedule relating to Scotland only are omitted.

(*q*) This includes works of underground drainage. See the Public Works Loans Act, 1894, s. 3.

Improvement of towns.

Labourers dwellings.

Lighthouses, floating and other lights for the guidance of ships, buoys, and beacons.

Lunatic asylums of any county or borough in Great Britain . . .

Police stations and justices rooms of any county or borough in Great Britain, and the offices connected therewith . . .

Prisons.

Public libraries and museums.

33 & 34 Vict. c. 70. 36 & 37 Vict. c. 86. Any schoolhouse or work for which a school board is authorised to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same . . .

Waterworks established or carried on by a sanitary or other local authority.

Workhouses or poorhouses, and any work for which guardians of the poor . . . are authorised to borrow under the general Acts relating to the relief of the poor.

38 & 39 Vict. c. 55. Any work for which a sanitary authority are authorised to borrow under the Public Health Act, 1875.

. . . . .

Any work for which the Commissioners are authorised to lend by any Act passed after the passing of this Act (*r*).

[Sect. 4.]

SECOND SCHEDULE.

FORM OF DECLARATION.

I, *A. B.*, do hereby declare that according to the best of my judgment I will faithfully and impartially execute the powers and duties of a Public Works Loan Commissioner according to law (*s*).

* * * * *

THE PUBLIC WORKS LOANS (MONEY) ACT, 1876.

(39 & 40 VICT. c. 31.) (*t*)

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners, and to amend the Public Works Loans Act, 1875.

[24th July 1876.]

PRELIMINARY.

Short title. **1.** This Act may be cited as the Public Works Loans (Money) Act, 1876.

2. [*Commencement of Act.*] (*u*)

3. [*Issue of money for loans.*] (*v*)

(*r*) See, for example, the Housing of the Working Classes Act, 1890, s. 67, *ante*, p. 918; the Public Works Loans Act, 1896, s. 2, *post*, p. 1901; the Small Dwellings Acquisition Act, 1899, s. 9 (7), *post*, p. 1964; the Public Works Loans Act, 1908, s. 6 (purposes of the Territorial and Reserve Forces).

(*s*) The Third Schedule was repealed by the S. L. R. (No. 2) A., 1893.

(*t*) The preamble to this Act was repealed by the S. L. R. A., 1894, and by s. 4 of that Act it was enacted that in any revised edition of the Statutes published by authority, the clause of enactment may be omitted. It is accordingly omitted here and in every subsequent Act in this Appendix.

As to the subject of this Act, see also the Acts mentioned in note (*k*) to the Public Works Loans Act, 1875, *ante*, p. 1608.

(*u*) Sections 2, 4, 5, and parts of ss. 6 and 7, here omitted, were repealed by the S. L. R. A., 1894. In s. 6, certain words relating to Scotland only are also omitted.

(*v*) This section was repealed by the S. L. R. A., 1883

AMENDMENT TO PUBLIC WORKS LOANS ACT, 1875.

4. [*Application of* 38 & 39 *Vict. c.* 89, *s.* 56.] (*x*)

5. [*Removal of doubt as to* 37 *&* 38 *Vict. c.* 24.] (*x*)

6. (*x*) . . . Nothing in the Public Works Loans Act, 1875, shall be deemed to take away or abridge the power of the Loan Commissioners under section two hundred and forty-three of the Public Health Act, 1875, . . . to reduce, if they think fit, any interest payable on any such loan to a local authority as is in those sections mentioned. Explanation of 38 & 39 Vict. c. 89, s. 33, as to reduction of interest on loans to sanitary authorities.

7. (*x*) . . . Sections eighteen and fifty of the Public Works Loans Act, 1875 (*y*), shall be construed as if "special Act" in those sections included any Act relating to any person having power to borrow money from the Public Works Loan Commissioners. Explanation of ss. 18, 50 of 38 & 39 Vict. c. 89.

8. [*Issue for adjustment of accounts prior to* 1*st April*, 1876.] (*z*)

THE COMMONS ACT, 1876.

(39 & 40 VICT. c. 56.) (*a*)

An Act for facilitating the Regulation and Improvement of Commons, and for amending the Acts relating to the Inclosure of Commons.

[11th August 1876.]

1. This Act may be cited for all purposes as the Commons Act, 1876. Short title.

PART I.

LAW AS TO THE REGULATION AND INCLOSURE OF COMMONS.

Applications in relation to Commons.

2. The Inclosure Commissioners (*b*) may entertain an application made in manner in this Act mentioned for a Provisional Order— Alternative Provisional Order for regulation or inclosure of commons.

(1) For the regulation of a common; or

(2) For the inclosure of a common or parts of a common.

Further, an application may be made as respects the same common for

(*x*) See note (*u*), *ante*, p. 1626.

(*y*) See the sections referred to, *ante*, pp. 1612, 1624.

(*z*) See note (*v*), *ante*, p. 1626.

(*a*) The preamble to this Act reciting the Inclosure Acts, 1845 to 1868, was repealed by the S. L. R. A., 1894. The powers and duties of the Inclosure Commissioners were by the Settled Land Act, 1882, s. 48, transferred to the Land Commissioners, and by the Board of Agriculture Act, 1889, s. 2, the powers and duties of the latter were transferred to the Board of Agriculture, now called the Board of Agriculture and Fisheries (see 3 Edw. 7, c. 31, s. 1). Throughout this Act, therefore, it is necessary to substitute the Board of Agriculture and Fisheries for the Inclosure Commissioners.

This Act confers on urban sanitary authorities important powers and duties with respect to suburban commons, which are extended to rural district councils in certain cases under s. 26 (2) of the L. G. A., 1894, *ante*, p. 1007. See also the Commons Act, 1899, *post*, p. 1949.

(*b*) Now the Board of Agriculture and Fisheries. See note (*a*), *supra*. The consent of the Board is also necessary to an inclosure or approvement under the Statute of Merton and the Statute of Westminster the Second, or either of such statutes. See the Law of Commons Amendment Act, 1893, s. 1. Nothing in the Copyhold Act, 1894, authorises a lord to enclose any common or waste land (57 & 58 Vict. c. 46, s. 95).

A much less cumbrous and expensive method than that afforded by this Act of providing for the regulation of a common is now given by the Commons Act, 1899, *post*, p. 1949.

the regulation of part of such common, specifying the part to be regulated, and for the inclosure of the residue, and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be inclosed may be modified by the Provisional Order.

The Commissioners shall not proceed to carry any application under this Act into effect until it is made to appear to them that the persons making the application represent at least one-third in value (*c*) of such interests in the common as are proposed to be affected by the Provisional Order.

"Regulation of common" includes adjustment of rights and improvement.

3. A Provisional Order for the regulation of a common may provide, generally or otherwise, for the adjustment of rights in respect of such common, and for the improvement of such common, or for either of such purposes, or for any of the things by this Act comprised under the expression "adjustment of rights" or "improvement of a common," or may state that all or any of such subjects are to be provided for in the proceedings subsequent to the confirmation of the Provisional Order by Parliament.

Explanation of adjustment of rights.

4. The adjustment of rights (*d*) in respect of a common comprises for the purposes of this Act all or any of the following things:

(1) As respects rights of common of pasture in a common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised (*e*);

(2) As respects rights of common of turbary, or taking of estovers (*d*), or taking gravel, stone (*f*), or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised, also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights which may permanently injure the common (*g*);

(3) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land;

(4) As respects any common whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the

(*c*) As to the method of arriving at the value, see Hunter on Open Spaces, 2nd ed., pp. 136—138.

(*d*) The destruction of an ancient house to which rights of common were appurtenant does not necessarily operate as an abandonment of those rights (*Att.-Gen.* v. *Reynolds*, [1911] 2 K. B. 888).

(*e*) As to commonable animals straying from unenclosed common land into an adjacent close and the obligation to provide fences on the part of the owner of such close, see *Coaker* v. *Willcocks*, [1911] 2 K. B. 124.

(*f*) See *Malvern Hill Conservators* v. *Whitmore* (1909), 73 J. P. 329; 100 L. T. 841.

(*g*) Where under an Inclosure Act (42 Geo. 3, c. xliii. s. 13), part of a waste was allotted to the lord in trust for the cottagers as a turf common, and subsequently a railway company took part of this turf common, it was held that the lord was entitled to so much of the fund in court as represented the value of the soil (*Att.-Gen.* v. *Meyrick*, [1893] A. C. 1; 57 J. P. 212).

manor, severalty owners or other person or persons entitled to the soil of such common, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights, and in particular in the case of severalty owners of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land; and

(5) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

5. The improvement of a common comprises for the purposes of this Act all or any of the following things; that is to say, Explanation of improvement.

(1) The draining, manuring, or levelling the common; and
(2) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common; and
(3) The making or causing to be made byelaws (*h*) and regulations for the prevention of or protection from nuisances or for keeping order on the common; and
(4) The general management of such common;
(5) The appointment from time to time of conservators of the common for the purposes aforesaid.

6. A Provisional Order for the inclosure of a common means a Provisional Order for inclosing the common, as provided by the Inclosure Acts, 1845 to 1868, as amended by this Act. Meaning of Provisional Order for inclosure.

7. In any Provisional Order in relation to a common, the Inclosure Commissioners (*i*) shall, in considering the expediency of the application, take into consideration (*k*) the question whether such application will be for the benefit of the neighbourhood (*l*), and shall, with a view to such benefit, insert in any such Order such of the following terms and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood (*m*)) as are applicable to the case; that is to say, Provisions for the benefit of a neighbourhood.

(1) That free access is to be secured to any particular points of view; and
(2) That particular trees or objects of historical interest are to be preserved; and
(3) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation

(*h*) See ss. 16, 17, *post*, pp. 1638, 1639.

(*i*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*k*) The Board of Agriculture and Fisheries are required to have regard to the same considerations in giving their consent to an inclosure or approvement under the Statute of Merton and the Statute of Westminster the Second, or either of those statutes (The Law of Commons Amendment Act, 1893, s. 3).

(*l*) This expression by the preamble to the Act was explained to include "the health, comfort, and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land proposed to be inclosed or any part thereof might be situate."

(*m*) Any of these statutory provisions for the benefit of the neighbourhood may be included in a scheme made by an urban or rural district council under the Commons Act, 1899, s. 1, *post*, p. 1949.

at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common (*n*); and

(4) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious; and

(5) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

Suburban Commons (*o*).

Sanitary authorities to be represented in the case of commons in the neighbourhood of towns.

8. Notice of any application under this Act in relation to a common which is situate either wholly or partly in any town or towns, or within six miles (*p*) of any town or towns (which common so situate is in this Act referred to as a suburban common) shall be served as soon as may be on the urban sanitary authority or authorities having jurisdiction over such town or towns, and it shall be lawful for the urban sanitary authority of any such town to appear before the assistant commissioner on the occasion of his holding a local inquiry as in this Act mentioned, and also to appear before the Inclosure Commissioners (*q*), and to make to him or them, at any time during the proceedings in relation to obtaining a Provisional Order under this Act, such representations as they may think fit with respect to the expediency or inexpediency of such application, regard being had to the health comfort and convenience of the inhabitants of the town over which such authority has jurisdiction, and to propose to him or them such provisions as may appear to such urban sanitary authority to be proper, regard being had as aforesaid.

Any urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners (*q*), enter into an undertaking to contribute out of their funds for or towards the maintenance of recreation grounds, or of paths or roads, or the doing any other matter or thing for the benefit of their town in relation to the common to which such application relates.

They may also, in relation to any such common, and with such sanction as aforesaid, enter into an undertaking to pay compensation in respect to the rights of commoners, for the purpose of securing greater privileges for the benefit of their town.

An urban sanitary authority may acquire by gift and hold without licence in mortmain on trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the Inclosure Commissioners (*q*) in pursuance of this Act, and any rights in such a common (*r*).

(*n*) See *Mitcham Common Conservators* v. *Cox*, [1911] 2 K. B. 855; 75 J. P. 471.

(*o*) By s. 26 (2) of the L. G. A., 1894, *ante*, p. 1007, any district council may, with the consent of the county council for the county within which any common land is situate, exercise in relation to any common within their district all such powers as may, under s. 8 of this Act, be exercised by an urban sanitary authority in relation to any common referred to in that section; and notice of any application to the Board of Agriculture (and Fisheries, as it is now called) in relation to any common within their district shall be served upon the district council, and by s. 26 (3) a district council may for the purpose of carrying into effect this section institute or defend any legal proceedings, and generally take such steps as they deem expedient.

(*p*) Measured in a straight line on a horizontal plane. See Interpretation Act, 1889, s. 34.

(*q*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*r*) The words "any rights in such a common" probably refer to limited interests in the soil, such as that of a tenant for life. It is thought they would enable a local authority to take a lease of a common (Hunter on Open Spaces, 2nd ed., p. 106). This Act, except

They may also in the case of any such suburban common purchase (*s*) and hold as aforesaid, with a view to prevent the extinction of the rights of common (*t*), any saleable rights in (*u*) common or any tenement of a commoner having annexed thereto rights of common.

They may also, with the consent of persons representing at least one-third in value of such interests in a suburban common as aforesaid as are proposed to be affected by the Provisional Order, make an application to the Inclosure Commissioners for the regulation of such common with a view to the benefit of their town and the improvement of such common.

Where an urban sanitary authority makes an application under this Act with such consent as aforesaid in respect of the regulation of a common, or undertakes to make any contribution or to pay any compensation or make any other payment out of its funds in respect of a common, such urban sanitary authority may, if the Inclosure Commissioners deem it advisable, having regard to the benefit of the neighbourhood as well as to private interests, be invested with such powers of management or other powers as may be expedient.

The expenses incurred by an urban sanitary authority in pursuance of this section may be defrayed out of any rate applicable to the payment of expenses incurred by such authority in the execution of the Public Health Act, 1875 (*x*), and not otherwise provided for. 38 & 39 Vict. c. 55.

A town for the purposes of this section means any municipal borough, or Improvement Act district, or Local Government district, having a population of not less than five thousand inhabitants.

The population of any town for the purposes of this Act shall be reckoned according to the last published census for the time being, and distances shall be measured in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there shall be only one church, or if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common. When part only of a common is situate within the aforesaid distance from a town, such part shall be deemed for the purposes of this section to be a common separate and distinct from the part situated without and beyond such distance.

Procedure.

9. The Inclosure Commissioners (*y*) shall from time to time, upon application made by the persons interested in any common (*z*), issue in such form as they may deem expedient information and directions as to the mode in which applications for the regulation or inclosure of commons under the *Issue of forms by Commissioners.*

s. 20, *post*, p. 1639, did not apply to metropolitan commons (see s. 35, *post*, p. 1644), but the power conferred under this section was extended to the Metropolitan Board of Works by the Metropolitan Commons Act, 1878, and the powers of that Board are now transferred to the London C. C. by the L. G. A., 1888, s. 40.

(*s*) Alternatively an urban district council might purchase on lease the common under s. 164 of the P. H. A., 1875, *ante*, p. 368.

(*t*) But purchase of rights to products such as wood, turf, or gravel in soil which cannot in the ordinary course of nature produce any more wood, turf, or gravel, will not prevent inclosure. See *Peardon* v. *Underhill* (1850), 16 Q. B. 120.

(*u*) *Sic* in Parliament Roll. Probably a misprint for "of."

(*x*) See s. 207, *ante*, p. 468.

(*y*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*z*) Application may now also be made by parish councils. See the L. G. A., 1894, s. 8 (1) (c). And that section also provides that notice of any application to the Board of Agriculture and Fisheries in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate (The L. G. A., 1894, s. 8 (3)).

Inclosure Acts, 1845 to 1868, as amended by this Act are to be made to the Commissioners, with such explanations as they may think fit with respect to the law for the regulation and inclosure of commons, and the persons so interested may apply accordingly in manner directed by the Inclosure Commissioners (*a*).

Rules as to application to Commissioners.

10. The following rules shall be observed with respect to an application to the Inclosure Commissioners (*a*) for a Provisional Order for the regulation or inclosure of a common; that is to say,

Publication of notices of application.

(1) The applicants previously to making their application shall publish, in such manner as the Inclosure Commissioners (*a*) may from time to time, by general or special order, direct, an advertisement giving notice of their intention to apply for such Provisional Order, and shall also serve a like notice on any urban sanitary authority entitled under this Act to receive such notice: Provided, that such advertisement as aforesaid shall always be inserted in at least one paper circulating in the neighbourhood of the common to which the application relates:

Manner of application.

(2) The application shall be in writing, accompanied with a map of the common, or part thereof, and, if for the regulation of a common, shall express whether the applicants propose that all or certain specified provisions only of this Act for the adjustment of rights or improvement of commons should be put in force in relation to such common, and whether to apply to the whole or part of such common, but, subject as aforesaid, an application for the regulation or inclosure of a common shall be in such form and be made in such manner as the Inclosure Commissioners (*a*) may from time to time direct:

Evidence to be furnished in support of application.

(3) On making their application in respect of any common, the applicants shall furnish the Inclosure Commissioners (*a*), in answer to questions previously submitted or otherwise in such manner as the said Commissioners may from time to time direct, with information bearing on the expediency of the application considered in relation to the benefit of the neighbourhood as well as to private interests:

Evidence in relation to benefit of neighbourhood.

(4) The information to be furnished as bearing on the expediency of the application, considered in relation to the benefit of the neighbourhood, shall comprise statements as to the particulars following; that is to say, as to the number and occupation of the inhabitants of the parish or place in which the common is situate; as to the population of the neighbourhood, and the distance of the common from any neighbouring towns and villages; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this Act for the benefit of the neighbourhood; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood; and in the case of a common being waste land of a manor, as to the site extent and suitableness of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes; and as to any other matter which in the judgment of the Inclosure Commissioners (*a*) may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to the benefit of the neighbourhood, and if acceded to, as to what statutory provisions as defined by this Act ought to be inserted in the Provisional Order for the benefit of the neighbourhood:

(*a*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

The Inclosure Commissioners (*b*) shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common, also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood:

(5) The information to be furnished as bearing on the expediency of the application considered in relation to private interests shall comprise statements as to the several particulars following; that is to say, as to the extent and nature of the common to which the application relates; as to the mines minerals or valuable strata (if any) under the same; as to the questions of boundary (if any) concerning such common, or such mines minerals or strata; as to the parties interested in such common, and the numbers and proportion in value of interest who have consented to or dissented from the application; as to the nature of the rights requiring the intervention of the Inclosure Commissioners (*b*) or the interference of Parliament; as to the supposed advantages of the application being acceded to; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the Provisional Order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected; and as to any other matter which in the judgment of the Inclosure Commissioners (*b*) may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to private interests, and if acceded to as to what provisions ought to be inserted in the Provisional Order for the protection of private interests: Evidence in relation to private interests.

(6) The Inclosure Commissioners (*b*) shall take into consideration any application made to them as in this Act provided, and if satisfied by the information furnished to them as aforesaid, or by any further inquiries made by themselves or an Assistant Commissioner, that a primâ facie case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, they shall order a local inquiry to be held by an Assistant Commissioner. Duty of Commissioners on application.

11. The following rules shall be observed with respect to a local inquiry held by order of the Inclosure Commissioners (*b*): Rules as to local inquiry.

(1) The Assistant Commissioner appointed to hold such inquiry shall inspect the common to which the application relates, and shall convene one or more public meetings at a suitable time and place for securing the attendance of the neighbouring inhabitants, and of all persons claiming interest in the common: Provided always, that one at least of such public meetings shall be held in the evening between the hours of seven and ten of the clock (*c*). Inspection and public meeting.

(2) The Assistant Commissioner shall give not less than twenty-one days notice of his intention to hold the first of such meetings. Notice of meeting.

(3) The notice shall, in such form as the Inclosure Commissioners from time to time direct, state the nature of the application made, the objects of the meeting, that the meeting is a public one and held for the purpose of enabling the Assistant Commissioner to hear all persons desirous of being heard on the subject-matter of the Contents of notice.

(*b*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*c*) It is the practice of the Board to hold two meetings—one in the morning and the other in the evening.

application, whether considered in relation to the benefit of the neighbourhood or to private interests, and the desirability of the attendance of all persons interested in the subject-matter of the inquiry.

Publication of notice.

(4) The notice shall be given—

(a) By affixing a copy thereof on the principal door of the church of the parish in which the common to which the application relates, or the greater part thereof is situate; and

(b) By posting copies of the same on or near the common to which it relates at the post office or post offices of the parish or district in which the common to which the application relates is situate, at any town hall, or vestry hall, or other building or room the expense of maintaining which is payable out of any local rate, situate in the parish or district, and at all places therein where notices are usually posted; and

(c) By advertising in such manner as the Inclosure Commissioners (*d*) may direct, or otherwise giving notice of the meetings in such manner as they think best calculated to ensure publicity in the locality.

Conduct of meeting.

(5) The Assistant Commissioner shall preside and regulate the proceedings at such meetings, and shall hear all persons desirous of being heard in relation to the subject-matter of the inquiry. He may adjourn any such meeting from time to time, or from place to place, on giving such notice of adjournment as he thinks best calculated to ensure publicity.

Personal inquiries by Assistant Commissioner.

(6) The Assistant Commissioner shall also make any inquiries and do any other acts which he may be instructed by the Inclosure Commissioners (*d*) or may think it advisable to do, for the purpose of enabling the Commissioners to judge as to the expediency of making the Provisional Order applied for, also as to the nature of the provisions to be inserted in any such Provisional Order if made.

Report of Assistant Commissioner to Inclosure Commissioners.

(7) The Assistant Commissioner shall report in writing to the Inclosure Commissioners (*d*) the result of the local inquiry, and of the public meeting or meetings held by him (in such form and with such details as the Inclosure Commissioners (*d*) may from time to time direct), and specially shall report to the Inclosure Commissioners (*d*) the information obtained by him as to the several particulars in respect of which the applicants for a Provisional Order are by this Act required to furnish information to the Inclosure Commissioners (*d*).

He shall also report the number of persons who attended the meetings held by him, the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted in the Provisional Order for the benefit of the neighbourhood or for the protection of private interests, and any other circumstances which he may think expedient, with a view to enable the Inclosure Commissioners (*d*) to judge of the expediency of making the Provisional Order, having regard as aforesaid, and also, if the Order be made, of the provisions to be inserted therein.

Map to accompany report.

(8) The report shall be accompanied by an outline or other map on such scale and of such a description as may be directed by the Inclosure Commissioners (*d*), with a sketch in the case of an inclosure of a common being waste of land of a manor, of the allotments (if any)

(*d*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

proposed to be made for recreation grounds and field gardens, or for either of such purposes.

12. The following rules shall be observed with respect to Provisional Orders to be made by the Inclosure Commissioners (*e*); that is to say, (*f*) Rules as to Provisional Orders.

(1) The Inclosure Commissioners (*e*), if satisfied by the report of the Assistant Commissioner or by further inquiries to be made by themselves or an Assistant Commissioner, that, having regard to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, shall frame in such form and with such provisions as they, having regard as aforesaid, may think expedient, and as are consistent with law and the description of Provisional Order applied for, a draft Provisional Order for the consideration of the persons interested in the common, specifying, if such application is for the regulation of a common, whether all or any one or more of the provisions of this Act for the adjustment of rights and the improvement of a common are to be put in force: Draft Provisional Order to be framed.

(2) With respect to provisions for the benefit of the neighbourhood, there shall be inserted in such draft Provisional Order all such of the statutory provisions as defined by this Act for the benefit of the neighbourhood as are applicable to the case; also, if the order is an inclosure order in the case of a common being waste land of a manor, the quantity and situation of the allotments (if any) to be made for recreation grounds and field gardens: Provisions for benefit of neighbourhood.

(3) With respect to private interests, there shall be inserted in such draft Provisional Order, (1) where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the order, a statement of the allotment (if any) or other compensation to be allotted or made to the lord of such manor in respect of his interest so affected; and (2) where there is any mineral property or other rights in relation thereto belonging to persons other than the lord of the manor which may be affected by the order, such provisions and reservations as are required to be inserted by the Inclosure Acts, 1845 to 1868, or as may appear to the Inclosure Commissioners (*e*) proper to be inserted; also, if there are any other rights which appear to the Commissioners proper to be specially provided for or to be excepted from the operation of the order, there shall be specified the provisions or exceptions to be made in that behalf: Provisions for protection of private nterests.

(4) As soon as may be after making their draft Provisional Order, the Inclosure Commissioners (*e*) shall cause a copy thereof to be deposited in the parish or parishes in which the common is situate to which such order relates, in order that the same may be considered by the parties interested therein, and they shall give notice, in such manner as they think best calculated to secure publicity, of such deposit having been made, and of their intention to certify the expediency of such order if the necessary consents are obtained thereto: Deposit of draft order for consideration of parties interested.

(*e*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*f*) In addition to these provisions, the Board of Agriculture and Fisheries may insert in the Order a provision for the raising and payment of expenses of and incidental to the regulation of the common, either wholly or partly, by a sale of a portion of the common, specifying the situation and maximum quantity sold; the expenses to be raised and paid in manner provided by the Inclosure Acts, 1845 to 1868 (see the Commons Expenses Act, 1878, s. 2). They may also specify in any Provisional Order for the regulation of a common, as one of the terms and conditions of the regulation, the appropriation of an allotment for the neighbouring poor, in which case the provisions of the Inclosure Acts, 1845 to 1876, as to allotments made on enclosure of a common, are to apply (*ibid.*, s. 4).

Consents before Provisional Order certified to be expedient.

(5) The Inclosure Commissioners (*g*) shall not certify the expediency of a draft Provisional Order unless they are satisfied that persons representing at least two-thirds in value of such interests in the common as are affected by the order consent thereto; and when the common to which the order relates is the waste land of any manor, or land within any manor to the soil of which the lord of such manor is entitled in right of his manor, then, unless there is more than one person interested in such manor according to the definition of the Inclosure Act, 1845, the Commissioners shall not certify the expediency of the same, unless the person interested in the common in right of such manor, or his substitute under the said Inclosure Act, 1845, consent to such order; and where there is more than one person interested in such manor the Commissioners shall not certify the expediency of the order, in case such persons or the majority of such persons in respect of interest signify their dissent within a time to be limited by the Commissioners (*h*):

8 & 9 Vict. c. 118.

Reservation in favour of freemen interested in common.

(6) Where the freemen, burgesses, or inhabitant householders of any city borough or town are entitled to rights of common or other interest in the common to which the draft Provisional Order relates, the Inclosure Commissioners (*g*) shall not certify the expediency of such Order unless it appears to the Commissioners that two-thirds in number of such of the freemen and burgesses so entitled as may be resident in such city borough or town, or within seven miles thereof, or of such inhabitant householders, as the case may be, have consented to the Order; and in case two-thirds in number of such resident freemen and burgesses, or of such inhabitant householders have so consented, such consent shall be deemed the consent of the class of freemen, burgesses, or inhabitant householders, as the case may be, so entitled:

Means of obtaining consents.

(7) The Inclosure Commissioners (*g*) may cause a meeting or meetings to be held by an Assistant Commissioner for the purpose of obtaining the necessary consents, or of ascertaining the interests of consenting or dissenting parties, or they may cause such consents or dissents to be ascertained in such other manner as they may think fit:

Power to modify Provisional Order before expediency certified.

(8) The Inclosure Commissioners (*g*) may, at any time before certifying the expediency of a draft Provisional Order, modify the same, of their own mere notion, or on the suggestion of any parties interested, but such modifications shall not be of any validity unless they are consented to in the same manner as if they formed part of the draft Provisional Order originally deposited by the Commissioners:

Certificate of expediency of Provisional Order.

(9) When the necessary consents have been obtained to any draft Provisional Order as originally deposited, or as modified in pursuance of this Act, such Order shall be deemed to be final; and the Inclosure Commissioners (*g*) shall in a report or reports to be made from time to time, as respects each Provisional Order which has become final as aforesaid, certify that it is expedient that such Provisional Order should be confirmed by Parliament, together with their reasons for certifying such expediency, and specially, as respects each Provisional Order, they shall, in such manner as they think best adapted to enable Parliament to judge of the expediency of such Order, state the infor-

(*g*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*h*) The necessity for obtaining the consents required by this sub-section was one of the great difficulties in the way of obtaining Provisional Orders under this Act. Under the Commons Act, 1899, which supplies an alternative and simple procedure, the necessity for dissent on the part of the lord or commoners, is substituted for the necessity of consent, and in the absence of dissent the scheme goes forward.

mation furnished to them as to the several particulars in respect of which the applicants for a Provisional Order are by this Act required to furnish information to the Commissioners; also the result of the local inquiry, and of the number and description of the persons who attended the meetings held during such inquiry, and the nature of the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted for the benefit of the neighbourhood or for the protection of private interests by the persons so attending, and any other circumstances which the Commissioners may think it expedient to state for such purposes as aforesaid:

Confirmation of Provisional Order.

(10) Every report made by the Inclosure Commissioners (*i*) certifying the expediency of any Provisional Order under this Act shall be presented to Parliament, and if at any time thereafter it is enacted by Act of Parliament that any Order for the regulation or inclosure of a common, the expediency of which has been so certified by the Commissioners, shall be confirmed, the regulation or inclosure of any common to which any such Order relates shall be proceeded with and completed according to the terms of the Provisional Order relating to such common, and to the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, and any Act of Parliament containing such enactments as aforesaid shall be deemed to be a public general Act, but a Provisional Order, until such Act of Parliament as aforesaid has been passed in relation thereto, shall not be of any validity whatever:

Supplemental power to modify Provisional Order after expediency certified.

(11) If, after the presentation to Parliament of a report made by the Inclosure Commissioners (*i*) certifying the expediency of any Provisional Order for the regulation or inclosure of a common, and before a Bill has been brought in for the confirmation of such Order, such report is referred to a committee of either House of Parliament for consideration, and such committee recommend that such Provisional Order should not be confirmed by Parliament except subject to certain modifications, the Inclosure Commissioners may modify the Provisional Order accordingly, but such modifications shall not be of any validity unless they are consented to in the same manner as if they had formed part of the draft Provisional Order originally deposited by the Commissioners:

And it shall be the duty of the Commissioners (*i*) to take the necessary steps for ascertaining whether such consent as aforesaid can be obtained or not, and if such consent be obtained, the Commissioners shall make a special report to the effect that the Order has been modified as aforesaid and such consent duly obtained, and such report shall be presented to Parliament; and thereupon the Order so modified shall be deemed to be in the same position in all respects as if it were an Order in respect of which a report had been made by the Commissioners certifying the expediency thereof, and such report had been presented to Parliament.

Partial application of procedure under Inclosure Acts.

13. The Inclosure Commissioners (*i*) may insert in any Provisional Order for the regulation of a common any provisions they may deem necessary for the purpose of carrying such Order into effect; but, subject as aforesaid, when an Act of Parliament has been passed as aforesaid, enacting that the regulation of a common shall be proceeded with, the subsequent proceedings for carrying into effect the regulation of such common shall be the same, so far as is practicable, as they would be in case such common were to be inclosed

(*i*) Now the Board of Agriculture and Fisheries. See note (*a*), p. 1627.

instead of being regulated, and the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, shall apply accordingly.

Power to raise money for improvement of common.

14. A Provisional Order for the regulation of a common may provide for the raising from time to time by such persons interested in the common, and for such amounts as the Commissioners (*j*) think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and which respectively will be benefited or principally benefited by such improvement or regulation, or by means of the sale of any outlying or other small portion not exceeding in the whole one-fortieth part of the total area of such common (*k*).

Supplemental Provisions.

Owners may make byelaws. 8 & 9 Vict. c. 118

15. The majority in value of the owners of stints (*l*) or rights of pasture in any regulated pasture created under the provisions of the General Inclosure Act, 1845 (*m*), in addition to the powers they now possess are hereby authorised at any annual meeting for the election of field reeves (*n*) to make byelaws and regulations for the prevention of or protection from nuisances or for keeping order on the regulated pasture, and for general management (*o*), occupation, and enjoyment of the regulated pasture, provided the consent of the lord of the manor is given to such byelaws.

Provision as to byelaws.

16. Any byelaw made in pursuance of this Act, and any alteration made therein, and any revocation of a byelaw, shall not be of any validity until it has been confirmed by one of her Majesty's principal Secretaries of State.

Pecuniary penalties (to be recovered summarily before any two justices) may be imposed by any such byelaws on persons breaking the same, provided that no penalty exceeds for any one offence the sum of forty shillings (*p*).

(*j*) Now the Board of Agriculture and Fisheries. See note (*a*), p. 1627.

(*k*) The Provisional Order must specify the situation and maximum quantity so sold. The Order may provide for the sale of part of the common in order to raise the expenses necessary for the regulation of the portion retained (41 & 42 Vict. c. 56, s. 2). The proceeds may, if the Order so provides, be invested, and the income applied towards the improvement or protection of the common; and the Order may also provide for the sale of all or part of the investment and the application of the proceeds for the like purpose (*ibid.*, s. 3).

(*l*) Stints or cattlegaits are rights of pasture for a stinted or limited number of beasts in a common close. See Fitzherbert's Extenta Manerii, 12, 13; Elton on Commons, ed. 1868, pp. 34, 35

(*m*) See 8 & 9 Vict. c. 118, s. 113, *et seq.*; 15 & 16 Vict. c. 79, s. 33; 17 & 18 Vict. c. 97, s. 6; 20 & 21 Vict. c. 31, s. 2.

(*n*) See 8 & 9 Vict. c. 118, s. 117, as to the election of field reeves.

(*o*) The Commons Act, 1908, enables regulations to be made as to turning out entire animals on commons.

(*p*) M. had premises adjoining a common regulated by byelaws under this Act, and at such premises she let ponies for hire. M. at her premises let ponies to be used by two persons on the common, and they used them there:—*Held*, that this was no offence against a byelaw which forbade the letting for hire of ponies on the common (*Marcy* v. *Morris* (1888), 52 J. P. 168). Where a local improvement Act authorised conservators of a common to make byelaws for the prevention of and protection from nuisances and for keeping order, N. was charged with placing a boat-van for pleasure on the common contrary to the byelaw without a licence and without payment of the prescribed fee:—*Held*, that the byelaw was not *ultra vires* merely because it prohibited vans being brought on the common without leave without expressly confining such prohibition to cases amounting to nuisanees (*Nash* v. *Manning* (1894), 58 J. P. 718). In *Scott* v. *Baring* (1894), 11 T. L. R. 175, a person was convicted of a contravention of a byelaw against digging loam, etc., made by the conservators of a common under the provisions of a local Act. He set up a claim of right under the authority of the lord of the manor, but it was contended that the question had been already decided in *Robertson* v. *Hartopp* (1890), 43 Ch. D. 484, that the lord of the manor had no right to dig loam on the common, and that, therefore, the claim of right was unreasonable:—*Held*, on appeal, that the conviction was wrong on the ground that the justices could not decide the question without going into the question of right.

17. No such confirmation shall take place unless notice of the intention to apply therefor, stating the effect of this section has been published by the conservators one month at least before the application. *Notice of application for confirmation of byelaws.*

During one month at least before the application a copy of every byelaw, the making, alteration, or revocation of which is submitted for confirmation, shall be kept at the office of the person or body of persons making, altering, or revoking such byelaw open for inspection by persons interested, and such person or body of persons shall furnish a printed copy thereof to every person applying for the same on payment of a sum not exceeding one shilling for each copy.

18. Subject to the terms of the Provisional Order the amount of any compensation to be paid for any restriction modification or abolition of rights in pursuance of an Order for the regulation of a common shall be deemed to be expenses of and incidental to the regulation of the common, and may be defrayed accordingly. *Provision as to certain expenses under order for regulation of a common.*

19. Whereas by several awards made under the authority of Inclosure Acts prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments: *Definition of power of Charity Commissioners in certain cases.*

And whereas under the provisions of the Inclosure Acts, 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons:

And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same: Be it enacted, that notwithstanding anything in any other Act contained, it shall not be lawful (save as hereinafter mentioned) to authorise the use of or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out: Provided, that it shall be lawful for the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorise the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of the Charitable Trusts Act, 1860, for the establishment of a scheme for the administration of such fuel allotment accordingly; and provided that it shall be lawful for the said Charity Commissioners, on such application as aforesaid, to authorise the exchange of any fuel allotment, or any part thereof, for land of equal value situate within the parish or district for the benefit of the poor of which such allotment was set out, if the Commissioners are of opinion that by means of such exchange land better suited for the purpose for which such allotment was set out will be obtained. *23 & 24 Vict. c. 136.*

20. Where any common is regulated pursuant to this Act by a Provisional Order of the Inclosure Commissioners (*q*) confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of the Metropolitan Commons Act, 1866, or the Metropolitan Commons Amendment Act, 1869, or (being situate within the metropolitan police district) is the subject of any private or local Act of Parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the Highway Acts (*r*), . . . *Gravel digging. 29 & 30 Vict. c. 122. 32 & 33 Vict. c. 107.*

(*q*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.
(*r*) Some words are here repealed by the S. L. R. A., 1898.

shall search for, dig, get, or carry away gravel sand stone or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of two or more justices in petty sessions assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient (*s*).

PART II.

AMENDMENT OF THE INCLOSURE ACTS.

Field Gardens and Recreation Grounds.

Expenses of clearing, draining, and fencing field gardens.

21. Whereas it is expedient that the expenses of clearing any allotments made for field gardens may be included in the expenses of an inclosure: Be it enacted that the valuer shall, unless the Inclosure Commissioners (*t*) otherwise direct, cause every allotment made for a field garden to be cleared drained fenced levelled and otherwise made fit for immediate use and occupation; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

Substituted allotments for recreation grounds and field gardens.

22. The provisions (*u*) of the Inclosure Acts, 1845 to 1868, which authorise the Inclosure Commissioners (*t*) to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any Provisional Order, shall extend to authorise them to allow the allotment of land of equal value although it may not be of equal quantity.

Situation of allotments for recreation grounds and field gardens

23. Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated; and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the Commissioners are satisfied that it would be advantageous that the allotment for a recreation ground or a field garden, or any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the Commissioners may, in the Provisional Order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value by way of exchange to the persons interested in the second-mentioned land.

Field gardens to be free of rent-charge.

24. There shall be repealed so much (*x*) of the Inclosure Acts, 1845 to 1868, as relates to the charging of an allotment made for the purpose of a field garden with a rent-charge; and every such allotment made after the passing of this Act shall be made free of any such rent-charge.

(*s*) This section is applied to any common regulated by scheme under Part I. of the Commons Act, 1899, *post*, p. 1949, by s. 8 of that Act.

The justices have an absolute discretion to make or to refuse to make an order under this section (*Hayes Common Conservators* v. *Bromley R. D. C.*, [1897] 1 Q. B. 321; 61 J. P. 104).

(*t*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*u*) See 8 & 9 Vict. c. 118, ss. 30, 73; 9 & 10 Vict. c. 70, s. 4.

(*x*) See 8 & 9 Vict. c. 118, ss. 31, 73, 75, 78; 15 & 16 Vict. c. 79, s. 18.

25. [*Allotments for recreation grounds to be vested in churchwardens and overseers.*] (*y*)

Amendment of law as to letting field gardens.

26. (*z*) . . . Allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same, or any unlet portion thereof, in gardens not exceeding an acre each to such inhabitants as aforesaid; Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates taxes tithes tithe rent-charge and the rent-charge charged on the said allotments under the provisions of the General Inclosure Act, 1845, but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

8 & 9 Vict. c. 118.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector, or vicar and churchwardens, overseers, managers, or any other person or persons whatever, and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens (*a*).

Application of surplus rents of recreation grounds and field gardens.

27. (*z*) . . . The surplus rents arising from recreation grounds shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood (*b*); and the surplus rents arising from field gardens shall be applied to all or any of the following purposes, and to no other purpose (*c*); that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood.

(*y*) Repealed by the S. L. R. A., 1894. As to the holding and management of allotments whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants by the parish council instead of by the overseers, see s. 6 (1) (c) (iii) of the L. G. A., 1894.

(*z*) The recital of s. 109 of the Inclosure Act, 1845, at the commencement of this section, and of s. 73 of that Act at the commencement of s. 27, with certain consequential parts of s. 27, were repealed by the S. L. R. A., 1894.

(*a*) In parishes where there is a parish council, the powers and duties of allotment wardens are now exercised and performed by the parish council (56 & 57 Vict. c. 73, s. 6 (1) (c) (iii)).

(*b*) And also in the improving of any of the field gardens to which this section applies in the same parish or neighbourhood, or maintaining the drainage and fencing thereof (42 & 43 Vict. c. 37, s. 2).

(*c*) But they may also be applied for any of the purposes for which surplus rents arising from recreation grounds may be applied (62 & 63 Vict. c. 30, s. 16, *post*, p. 1953). And under the same section surplus rents arising from any field garden or recreation ground may be applied towards the redemption of any land tax, tithe rent-charge, or other charge on the garden or ground.

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners (*d*), sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood: Provided that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided that the Inclosure Commissioners (*d*) shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners (*d*), and shall remain in their hands until such purchase of other land as aforesaid.

Reports by managers of recreation grounds and field gardens.

28. The trustees of recreation grounds, where such trustees are the overseers or churchwardens of a parish, and the allotment wardens of field gardens (*e*) shall, from time to time, and at such intervals of not less than three years nor more than five years, as the Inclosure Commissioners (*d*) direct, make such reports to the said Commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the Commissioners may require.

Town and village greens.

29. (*f*) . . . An encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the Inclosure Act, 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned (*g*).

20 & 21 Vict. c. 31.

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

Jurisdiction of county court in respect of illegal inclosures.

30. (*h*) A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure encroachment or nuisance, or

(*d*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*e*) See note (*a*), *ante*, p. 1641.

(*f*) The recital of s. 12 of the Inclosure Act, 1857, as to town and village greens was repealed by the S. L. R. A., 1894. Town or village greens cannot be taken for light railways without the consent of the Board of Agriculture. They are also "commons" within the meaning of the Commons Act, 1899, though apparently not "commons" within the meaning of this Act. As to parish councils, see s. 8 of the L. G. A., 1894.

(*g*) The Inclosure Act, 1857, s. 12, provides a summary remedy for injury or damage to the fences of or for other nuisances to a town or village green. The penalty for each offence is forty shillings, which with the damage is recoverable summarily before justices. Under that section, however, the proceedings could only be instituted by a churchwarden or overseer, or the person in whom the soil was vested.

(*h*) Sections 30 and 31 are extended to metropolitan commons by the Metropolitan Commons Act, 1878, s. 3. For procedure in the county court, see County Court Rules, Order L., r. 9. No special procedure as to appeals is prescribed by the Rules of the Supreme Court, therefore the usual practice under s. 120 of the County Courts Act, 1888, is applicable in such appeals. See R. S. C., Order LIX., rr. 10, 18.

to make an order for the removal or abatement of such inclosure encroachment or nuisance.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the High Court of Justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875. 38 & 39 Vict. c. 77.

The appellate court may on hearing the appeal reverse modify or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure encroachment or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

Three months' notice of claim to inclose to be given in the local papers.

31. Any person intending to inclose or approve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common or part of a common, by publishing, at least three months beforehand, a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor (*i*).

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

Appointment of valuer to be confirmed by Commissioners.

32. An appointment of a valuer shall not be valid until it has been confirmed by the Commissioners (*j*). The Commissioners (*j*) may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed (subject to the approval of the Commissioners (*j*)) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the Commissioners is appointed.

(*i*) This exception is hardly worded with due legal accuracy. Where all rights of common are released or conveyed to the lord of the manor, the land formerly common becomes freed from them and ceases to be common at all. A person inclosing a common without advertising his intention as required by this section might be indicted for misdemeanor in disobeying the statute, or be restrained by injunction from continuing hi inclosure and ordered to remove it on an information filed by the Attorney-General in the name of a person interested.

(*j*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

General Amendment.

As to exchanges and partitions. 8 & 9 Vict. c. 118, s. 105.

33. The provisions of section one hundred and five of the Inclosure Act, 1845, relating to the validity after confirmation of an award of inclosure of the exchanges, and partitions set forth in such award, shall apply to orders of exchange partition and division of intermixed lands carried into effect in pursuance of the Inclosure Acts, 1845 to 1868, by separate orders, and not included in an award of inclosure.

PART III.

MISCELLANEOUS.

Amendment of law as to reports.

34. *There shall be repealed so much of section thirty of the Inclosure Act,* 1845, *as prescribes a limit to the quantity of land to be allotted to recreation grounds; also the twenty-fourth, twenty-fifth, twenty-sixth, and twenty-seventh sections of the Inclosure Act,* 1845, *and* (*k*) the Inclosure Commissioners (*l*) shall not be required to repeat, in their general annual report, any of the particulars in relation to the regulation or inclosure of commons which they may have stated in any other reports made by them in pursuance of this Act, in relation to such commons, but they may refer to such other reports, or give a summary thereof, or otherwise deal with the same as may be thought expedient.

Metropolitan commons. 29 & 30 Vict. c. 122. 32 & 33 Vict. c. 107.

35. This Act, save as herein expressly provided (*m*), shall not apply to any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 and 1869.

A common regulated under Act not to be inclosed without sanction of Parliament.

36. Where an Act of Parliament has been passed confirming a Provisional Order under this Act for the regulation of a common, then, subject to and without prejudice to the provisions of that Order, such common shall not, nor shall any part thereof, be inclosed without the sanction of Parliament subsequently obtained.

Definitions.

Definitions.

37. In this Act, unless the context otherwise requires,—

"A common" means any land subject to be inclosed under the Inclosure Acts, 1845 to 1868 (*n*):

"Waste land of a manor" means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and are not limited by number or stints:

"Person" includes a body corporate (*o*):

. . . . .

"Municipal borough" means any place for the time being subject to the Municipal Corporations Act, 1835, and the Acts amending the same (*p*):

"Improvement Act district" means any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local Act

(*k*) This section was repealed down to this point by the S. L. R. A., 1883.

(*l*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*m*) See s. 20, *ante*, p. 1639; note (*r*) to s. 8, *ante*, p. 1630; and note (*h*) to ss. 30 and 31, *ante*, p. 1642.

(*n*) See s. 4, *ante*, p. 1628.

(*o*) The definition of "Inclosure Acts, 1845 to 1868," and the schedule to this Act to which that definition referred, are repealed by the S. L. R. A., 1894. See now the Short Titles Act, 1896.

(*p*) Now the Municipal Corporations Act, 1882; see s. 242 of that Act.

of Parliament with powers of improving, cleansing, lighting, or paving any town:

"Local government district" has the same meaning as it has in the Public Health Act, 1875 (*q*). 38 & 39 Vict. c. 55.

* * * * *

THE RIVERS POLLUTION PREVENTION ACT, 1876.

(39 & 40 VICT. c. 75.)

An Act for making further Provision for the Prevention of the Pollution of Rivers (*r*). [15th August 1876.]

1. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876 (*s*). Short title.

PART I.

LAW AS TO SOLID MATTERS.

2. Every person (*t*) who puts or causes to be put or to fall or knowingly permits (*u*) to be put or to fall or to be carried into any stream (*x*), so as either singly or in combination (*y*) with other similar acts of the same or Prohibition as putting solid matters into streams.

(*q*) See s. 4 of that Act, *ante*, p. 4.

(*r*) See also the Rivers Pollution Prevention Act, 1893, and the Rivers Pollution Prevention (Border Councils) Act, 1898, *post*, pp. 1882, 1915. The provisions of the Act exceed this title, inasmuch as they not only provide against the pollution of rivers, but also against their obstruction by the placing of solid matters therein. The preamble to this Act was repealed by the S. L. R. A., 1894. See also s. 4 of that Act as to the omission of the clause of enactment.

(*s*) Sanitary authorities will derive considerable assistance in construing this Act from the circular of the L. G. B., issued August 6th, 1877, and set out at p. 481 of Glen's Local Government Orders.

(*t*) Note that the definition in s. 20, *post*, p. 1660, extends this word to any body of persons corporate or unincorporate. Hence associations, or companies, or partners may be answerable as well as individuals.

(*u*) In *Hipkins* v. *Birmingham and Staffordshire Gaslight Co.* (1861), 24 J. P. 438; 6 H. & N. 250, the word "suffer," which has much the same signification as permit, was held to apply to involuntary omission to prevent. Here there is a limitation, as, by this section, the permission must be with knowledge which implies will, but see now the Rivers Pollution Prevention Act, 1893, *post*, p. 1882. The predecessors of the appellants had made an agreement with the owner of a margarine factory, that he should be entitled, subject to certain conditions, to discharge the effluent from the factory into their sewers. Owing to a breach of this agreement, the soil of a sewage farm, the property of the appellants, became clogged, and consequently offensive matter found its way into the river Brent:—*Held*, that it was the appellants who "caused or suffered to flow or pass" sewage or other injurious matter into the river within s. 13 of the Middlesex County Council Act, 1898 (*Southall and Norwood U. D. C.* v. *Middlesex C. C.* (1901), 65 J. P. 215; 83 L. T. 742).

(*x*) See the definition in s. 20, *post*, p. 1660.

(*y*) It is not intended by this word to imply any conspiracy or joint action. It is apparently intended to refer to simultaneous action, so that if one manufacturer cast his refuse into the stream with little effect, yet if at the same time other manufacturers cast their refuse therein, the mischief would arise and each would be responsible. See *Blair* v. *Deakin*, *post*, p. 1646.

any other person to interfere with its due (*z*) flow, or to pollute (*a*) its waters, the solid refuse of any manufactory, manufacturing process or quarry (*b*), or any rubbish or cinders, or any other waste (*c*) or any putrid solid matter (*d*), shall be deemed to have committed an offence (*e*) against this Act (*f*).

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose (*g*).

PART II.

LAW AS TO SEWAGE POLLUTIONS.

Prohibition as to drainage into streams of sewers.

3. Every person (*h*) who causes to fall or flow or knowingly permits (*i*) to fall or flow or to be carried into any stream (*k*) any solid or liquid sewage

(*z*) These words require attention. The flow of a stream raises two considerations : first, as to the velocity of the stream ; secondly, as to its course or channel. The velocity and the channel must not be impeded. That is, the stream must not be made to run slower, neither must it be diverted from its proper channel. The word "due" signifies its natural flow. In the case of a pure undisturbed stream, the natural flow would be ascertained easily, but the case will be different where a stream has long been the subject of impediment. Does the statute contemplate the existing state of things, prohibiting any further impediment, or does it refer back to the original state of the stream, and require the original flow to be restored and kept up ? This latter alternative will generally be so impracticable that the former seems the preferable construction.

(*a*) See in s. 20, *post*, p. 1661, as to what is not polluting. It will be remembered that s. 68 of the P. H. A., 1875, *ante*, p. 143, provides for the pollution of water by gas washings. It appears from the cases of *Filbey* v. *Coombe* (1837), 2 M. & W. 677 ; 1 Jur. 721, and *Law* v. *Dodd* (1847), 1 Exch. 845 ; 17 L. J. M. C. 65, that the refuse of a manufactory is that which the manufacturer himself contemplates as rubbish.

(*b*) Section 4, *post*, p. 1649, provides for mines.

(*c*) Does this word waste apply to the following word matter ? Apparently not.

(*d*) See in s. 20, *post*, p. 1661, the limitation to be put upon the words "solid matter." A putrid effluent of 97·6 per cent. water and only 2·4 per cent. solids is not "putrid solid matter" (*River Ribble Committee* v. *Halliwell*, [1899] 2 Q. B. 385 ; 63 J. P. 708, followed in *West Riding of Yorkshire Rivers Board* v. *Rawson* (1903), 67 J. P. 407 ; 89 L. T. 363).

(*e*) Although this section creates this offence, the statute does not make the commission criminal so as to render the party subject to any penalty. It is provided merely that the county court may restrain the continuance of the offence, and make an order, and if such order be disobeyed the offender will be liable to a penalty.

Where a statute prohibits an act and provides no penalty, the person who commits the act is liable to be indicted for a common law misdemeanor, but the rule cannot be held to apply here, as the statute contains a remedy.

The acts mentioned in the section when committed in navigable rivers will generally be such nuisances as will subject the person committing them to prosecutions for nuisances, and such prosecutions may still be instituted though they afford but indifferent remedies, and are generally very costly.

(*f*) Reference must be made to s. 17, *post*, p. 1659, which prevents the Act from applying to the lawful exercise of any rights of impounding or diverting water.

Thus, in *Smith* v. *Barnham* (1876), 34 L. T. 775, a local Act having prohibited persons from wilfully throwing rubbish into a stream, the Court of Appeal were disposed to hold that where a person exercised a right claimed by many years' enjoyment to cast the refuse of a tannery into the stream, he was not to be considered to be wilfully casting rubbish therein within the operation of the clause. The point was not, however, distinctly decided.

(*g*) This would be lawful in prosecutions for nuisances. The principle that the acts of several persons may, together, constitute a nuisance which may be restrained by injunction, though the damage occasioned by the act of any one of such persons, taken by itself, would be inappreciable, was laid down in *Thorpe* v. *Brumfitt* (1873), L. R. 8 Ch. 650, and recognised in *Lambton* v. *Mellish*, [1894] 3 Ch. 163 ; 58 J. P. 835. So where several manufacturers had their works upon a stream and caused a nuisance to a riparian owner below them by discharging offensive matter into the stream, it was held no answer to an action for nuisance brought against one of them by such owner to say that the share the defendant contributed to the nuisance was infinitesimal (*Blair* v. *Deakin* (1887), 57 L. T. 522 ; 4 T. L. R. 757).

(*h*) See the definition in s. 20, p. 1660. A sanitary authority may be brought within the operation of this section.

(*i*) (*k*) For note (*i*), see p. 1647 ; for note (*k*), see p. 1648.

matter (*l*), shall (subject as in this Act mentioned (*m*)) be deemed to have committed an offence against this Act (*n*).

(*i*) See note (*u*) to s. 2, *ante*, p. 1645. And note that now by the Rivers Pollution Prevention Act, 1893, *post*, p. 1882, it is enacted that where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of s. 3 of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

Two local sanitary authorities appointed a joint drainage committee consisting of members from each board, and gave to such joint committee the exclusive control and management of the sewage and sewage works, and henceforward the disposal and treatment of the sewage of both districts were carried out under the control of the said committee. The sewage works continued to remain the property of the local board to which the said works belonged prior to the appointment of the said joint committee. Sewage or other offensive or injurious matter was allowed to flow from the said sewage works into an adjoining river, thereby polluting it. The conservancy board thereupon served a notice in writing upon the local board to which the sewage works belonged to discontinue the flow of sewage matter into the river. The local board having failed to comply with the terms of the notice, were summoned before the magistrates to compel them to discontinue the nuisance, or to render them liable to the penalty for not doing so :—*Held*, that the local board were not liable as they had ceased to have control over the sewers, and so could not have "caused" or "suffered" the outflow into the river (*Lea Conservancy Board* v. *Tottenham L. B.* (1891), 55 J. P. 343 ; 64 L. T. 198).

The plaintiffs, under s. 10 of this Act, *post*, p. 1655, applied to a county court for and obtained an order to restrain the defendants from causing the sewage to flow into a stream. On appeal against this order it appeared to the court that, upon the facts of the case, the plaintiffs were themselves in default in not having made any provision for dealing with the sewage in these sewers, as required by the P. H. A., 1875 :—*Held*, that the making of the order was discretionary, and although the defendants had offended against this Act, as a matter of discretion, under the circumstances of the case, an order ought not to be made against them at the instance of the plaintiffs, who were themselves offenders against this Act, and were seeking to avoid performance of their duty under the P. H. A., 1875 :—*Held*, also, that an appeal on the above-mentioned ground was correctly brought by way of motion (*Kirkheaton District L. B.* v. *Ainley & Co.*, [1892] 2 Q. B. 274 ; 56 J. P. 374).

The conservators of the river T. having indicted the local board of S., as the urban sanitary authority, for having in contravention of s. 63 of the Thames Navigation Act, 1866, "caused, or, without lawful excuse, suffered," sewage matter to flow into the river T. within their district, in connection with which certain points of law were necessarily involved, it was held that the proper course to follow was to take a special verdict, prepared by both sides, from the jury, after formal evidence of the matters alleged in the special verdict had been given, and that the points of law arising thereon should be subsequently discussed in the Court for Crown Cases Reserved (*R.* v. *Staines L. B.* (1888), 52 J. P. 215).

A local board under the P. H. A., 1875, have only a qualified property in the sewers within their district, and cannot prevent persons who have acquired a prescriptive right to use them from so doing, unless they provide other sewers equally effectual. Where a local board have not themselves constructed sewers which are a nuisance, but have only permitted them to be used by inhabitants who have acquired a prescriptive right to use them, the local board do not "cause or suffer" sewage to flow into the Thames within the meaning of s. 64 of the Thames Navigation Act, 1866, and cannot be convicted of a misdemeanor under that Act (*R.* v. *Staines L. B.* (1889), 53 J. P. 358 ; 60 L. T. 261). The predecessors of a local sanitary authority had made an agreement with the owner of a margarine factory that he should be entitled, subject to certain conditions, to discharge the effluent from the factory into their sewers. Owing to a breach of this agreement, the soil of a sewage farm, the property of the local authority, became clogged, and consequently offensive matter found its way into the river Brent. It was held that the local authority "caused or suffered to flow or pass" sewage or other injurious matter into the river within the meaning of s. 13 of the Middlesex County Council Act, 1898 (*Southall and Norwood U. D. C.* v. *Middlesex C. C.* (1901), 65 J. P. 215 ; 83 L. T. 742). And see *Brown* v. *Dunstable Corporation*, [1899] 2 Ch. 378 ; 63 J. P. 519. The case of *R.* v. *Staines L. B.* (1889), *supra*, was followed in two subsequent cases. In *Thames Conservators* v. *Gravesend Corporation*, [1910] 1 K. B. 442 ; 73 J. P. 381, sewage passed from the premises of private persons and from premises belonging to the corporation into a sewer which was vested in the corporation, and thence flowed into the river Thames. It was held that as regards the sewage which came from their own premises, the corporation had "caused or suffered" the sewage to flow into the river within the meaning of s. 94 of the Thames Conservancy

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(*l*) (*m*) (*n*) For notes (*l*), (*m*), (*n*), see p. 1648.

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person (*n*) causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case (*o*) that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream (*p*).

Act, 1894, but as regards the sewage coming from the premises of private persons, they had not done so. In *Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board* (1910), 74 J. P. 253 ; 103 L. T. 192, it was held that where a person has acquired the right to send sewage into the sewers of a local authority, and that sewage passes into a river, the local authority cannot be convicted of causing or suffering the sewage to pass into the river. See, however, *Rochford R. D. C.* v. *Port of London Authority* (1914), 2 K. B. 916, where the above cases are distinguished if not overruled as being inconsistent with the decisions of the C. A. in *Kirkheaton L. B.* v. *Ainley* (1892), 2 Q. B. 274, and *Yorkshire W. R. C. C.* v. *Holmfirth U. D. C., infra.*

(*k*) See the definition in s. 20, *post*, p. 1660, where it will be seen how far sewers draining into the sea or tidal waters are affected by those enactments.

(*l*) There is no definition of "sewage matter" in this Act nor in the P. H. A., 1875, nor elsewhere. It appears to be properly the matter which is contained in a sewer. In *Sutton* v. *Norwich Corporation* (1858), 27 L. J. Ch. 739 ; 6 W. R. 432, KINDERSLEY, V.-C., observed that "in the common sense of the term a sewer means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality." Hence sewage matter appears to be feculent matter, and this is supported by s. 17 of the P. H. A., 1875, *ante*, p. 59, where the words used are "sewage or filthy water." See also *Durrant* v. *Branksome U. D. C., ante*, p. 59.

It will be observed that it is not necessary to prove that any injurious effect has followed from the act referred to.

The occupier of any premises will be answerable for the acts of his household if he knowingly permits the sewage to fall into the stream, and this knowledge will be readily presumed from the state of the premises.

(*m*) See the restrictions on the proceedings in s. 13, *post*, p. 1658. The saving in s. 17, *post*, p. 1659, can have no operation upon the section. Hence no prescriptive right or licence under grant will be available against this statutory prohibition (*Lanarkshire C. C.* v. *Airdrie Magistrates ; Lanarkshire C. C.* v. *Coatbridge Magistrates* (1907), 44 Sc. L. R. 915 ; *Midlothian C. C.* v. *Oakbank Oil Co.* (1904), 6 F. 387).

At common law a person cannot gain a prescriptive right to pollute the water of a river to such an extent and under such circumstances as to create a public nuisance (*R.* v. *Cross* (1812), 3 Camp. 224). But apart from this Act a riparian owner may, under s. 2 of the Prescription Act, 1832, obtain, as against other riparian owners, a right to discharge polluting matter into a river (*Wright* v. *Williams* (1836), 1 M. & W. 77 ; 1 Gale 410 ; *Carlyon* v. *Lovering* (1857), 1 H. & N. 797 ; 29 L. J. Ex. 251). The burden, however, cannot be increased (*Crossley* v. *Lightowler* (1867), L. R. 2 Ch. 478), and if an increase cannot be separated from the legal user, there may be a total prohibition (*Blackburne* v. *Somers* (1879), 5 L. R. Ir. 1 ; *Frechette* v. *Compagnie Manufacturière de Ste. Hyacinthe* (1883), 9 App. Cas. 170). But a mere variation in the process of manufacture which alters the constituents of washings discharged without increasing the burden does not give a cause of action (*Baxendale* v. *McMurray* (1867), L. R. 2 Ch. App. 790), although the substitution of a totally different class of business might do so (*Clarke* v. *Somersetshire Drainage Commissioners* (1888), 57 L. J. M. C. 96 ; 59 L. T. 670).

(*n*) Here also no penalty is imposed, but the application must be made to the county court to prevent the continuance of the offence. It must be noticed, however, that the person who thus acts may be liable to prosecution under the P. H. A., 1875, s. 91, *ante*, p. 162, and thereby rendered liable to a penalty.

(*o*) He cannot have the benefit of this provision until he is taken before the court, but he will be entitled to notice of the intended proceedings under s. 13, *post*, p. 1658.

(*p*) The county court judge must consider whether this is the fact or not, and it is not sufficient to hold merely that nothing has been done to aggravate the nuisance (*West Riding Yorkshire C. C.* v. *Holmfirth L. B.*, [1894] 2 Q. B. 842 ; 59 J. P. 213). A certificate from the inspector, under s. 12, *post*, p. 1657, will prove this fact. In an appeal under this Act, the case stated that a sanitary authority was and had been, for a long period before the passing of the Act, sending a large quantity of sewage into a watercourse which joined a larger stream, the water in which above the junction was available for most primary purposes, and that the combined stream fell into the sea three miles below the junction. The effect of this flow of sewage was, that in the summer months the greater part of the

Where the Local Government Board are satisfied after local inquiry (*q*) that further time ought to be granted to any sanitary authority (*r*), which at the date of the passing of this Act is discharging sewage matter into any stream (*r*), or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter. the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed (*s*) by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream (*r*) along a drain (*u*) communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing (*x*).

PART III.

Law as to Manufacturing and Mining Pollutions.

4. Every person (*y*) who causes to fall or flow or knowingly permits (*z*) to fall or flow or to be carried into any stream (*a*) any poisonous, noxious, or

Prohibition as to drainage into streams from manufactories

contents of the combined stream was foully polluted. The case, while it contained the statement that the combined stream had been for more than forty years carrying more or less polluted matter into the sea, also stated that the pollution had been largely increased within the last twenty years :—*Held*, that although the tributary stream was, at the date of the Act, " mainly used as a sewer " (see s. 20, *post*, p. 1660), and was therefore exempted from the operation of the Act, the stream into which it flowed was not so used, and that therefore the pollution of the latter must be prevented (*Portobello Magistrates* v. *Edinburgh Magistrates* (1882), 10 Ct. of Sess. Cas. (4th ser.) 130).

(*q*) See the P. H. A., 1875, Part IX., *ante*, p. 622, as to local inquiries by the L. G. B.

(*r*) See the definition of this term in s. 20, *post*, p. 1661.

(*s*) This section does not authorise the withdrawal or rescinding of the order. Hence, probably the Board will generally make the order for a short period.

The order will be made upon application from the sanitary authority, who should apply in writing, on folio foolscap paper, addressed to the President of the Board, under cover directed to the Secretary. There should be a concise statement of the circumstances which induced the sanitary authority to make the application.

(*u*) See the definition of a drain in the P. H. A., 1875, s. 4, *ante*, p. 24.

(*x*) It is presumed that these words have a retrospective operation and apply to the sanction given tacitly or actually to communications made before the Act, as well as to cases where drains are made hereafter to communicate with sewers. The sanitary authority will be responsible for the sewer itself (*Ferrand* v. *Hallas Land and Building Co.*, *ante*, p. 46). See also note (*i*), *ante*, p. 1647, and the Rivers Pollution Prevention Act, 1893, *post*, p. 1882, and *cf.* the case of *Leeds and District Worsted Dyers and Finishers Association* v. *West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480 ; 5 L. G. R. 72.

It will be remembered that the communication of the drain with the sewer has often been the result of compulsion authorised by the statutes.

(*y*) See the definition in s. 20, *post*, p. 1660, which includes bodies of persons as well as individuals.

(*z*) See note (*u*) on s. 2, *ante*, p. 1645. Proceedings cannot be taken against a local authority under this section for causing or permitting polluting liquid proceeding from a factory or manufacturing process to fall or flow or be carried into a stream (*West Riding of Yorkshire Rivers Board* v. *Linthwaite U. D. C.*, [1914] 2 K. B. 13).

(*a*) See the definition in s. 20, *post*, p. 1660. A stream does not become a sewer within the meaning of the P H. A., 1875, by reason of the discharge of manufacturing effluent into it in contravention of this section (*West Riding of Yorkshire Rivers Board* v. *Gaunt* (1903), 67 J. P. 183 ; 1 L. G. R. 133). In proceedings taken under s. 3, *supra*, a county court judge found that the beck in question was a " stream " within the meaning of s. 20, but did not expressly find that it was not a " sewer." The Divisional Court held that the question was in fact raised before the judge and was in terms decided by him (*West Riding of Yorkshire Rivers Board* v. *Yorkshire Indigo Scarlet and Colour Dyers, Ltd.* (1903), 67 J. P. 80). The case of *West Riding of Yorkshire Rivers Board* v. *Gaunt*, *supra*, was con-

polluting (b) liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned (c)) be deemed to have committed an offence against this Act (d).

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed (e) in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows (f) to the satisfaction of the court having

sidered in *West Riding of Yorkshire Rivers Board* v. *Preston* (1905), 69 J. P. 1; 92 L. T. 24, the facts of which were as follows:—The defendants sent polluting liquids from their factory into a channel. This channel was said to have originally carried down water from a well above the factory, but the defendants diverted this water supply above their factory, took it into their mill and discharged it in a polluted state into the channel close to their factory. The channel ran from the factory past certain cottages, then joining a stream, fell with the stream into a river. Fifty or sixty cottages emptied their sewage into the channel below the factory till 1892, when a sewerage scheme was put into operation for the district. Two cottages still discharged slop water into the channel, and two or three small watercourses fell into it below the factory. A county court judge held that the channel was a stream within the meaning of s. 20, and that the defendants had committed an offence under this section. The Divisional Court held that a stream within the meaning of the Act may be either a natural or an artificial one; and that the court was not prepared to differ from the conclusion of the county court judge that the channel was a stream, since (apart from the existing watercourses below) pure water would still flow along the course but for the acts of the defendants. It has since been held that the discharge of sewage into the channel of an intermittent stream may have the effect of converting it into a sewer although the natural flow of the pure water is not cut off, and that no rule to the contrary is established by *West Riding of Yorkshire Rivers Board* v. *Gaunt*, *supra*, or *West Riding of Yorkshire Rivers Board* v. *Preston*, *supra* (*Att.-Gen.* v. *Lewes Corporation*, [1911] 2 Ch. 495; 76 J. P. 1). A county council applied for an order under this Act to restrain the appellants "from causing to fall or flow or to be carried into" certain streams "any solid or liquid sewage matter." The appellants alleged that the streams in question were not streams within the meaning of the Act in respect that at the date of the passing of the Act they were mainly used as sewers. There was a definite finding of fact that the appellants discharged all their sewage into the streams in question. It was held that the streams were "streams" and not "watercourses mainly used as sewers" within the meaning of the Act. In the course of his judgment Lord HALSBURY said, "I wish to add that *Gaunt's Case*," *supra*, "appears to me to have been perfectly rightly decided" (*Airdrie Magistrates* v. *Lanarkshire C. C.*, [1910] A. C. 291).

(b) These three words must have separate meanings: "poisonous" implies destruction to life, human or animal; "noxious" is lower in degree, and signifies some injury, but not of necessity immediately dangerous to life; "polluting" will include both the other qualities and also what is foul and offensive to the senses, except innocuous discolouration, as to which see s. 20, *post*, p. 1660.

This section applies to a liquid only, as there is no reference here to the obstruction of the stream. See as to throwing cinders, etc., into streams, the P. H. A., 1890, s. 47, *ante*, p. 858.

(c) See s. 13, *post*, p. 1658.

(d) See note (u) on s. 2, *ante*, p. 1645. Manufacturers caused polluting liquid to flow into a sewer which discharged into a stream. The sewer existed at the date of this Act, and was vested in and under the control of the local sanitary authority. The manufacturers used no means to render the polluting liquid harmless. It was held that, even assuming that there was a prescriptive right to discharge their polluting liquid into the sewer, the manufacturers had committed an offence under the section by discharging into a sewer through which the liquid found its way into the stream (*West Riding of Yorkshire Rivers Board* v. *Butterworth*, [1909] A. C. 45; 73 J. P. 89).

Proceedings cannot be commenced under this section until the consent of the L. G. B. has been obtained under s. 6, *post*, p. 1651, and due notice given under s. 13, *post*, p. 1658, and that consent must be obtained before the notice required under s. 13 can be given (*West Riding of Yorkshire Rivers Board* v. *Robinson*, [1907] 1 K. B. 431; 71 J. P. 137).

(e) This channel may be constructed at any time hereafter; but it must be carefully noticed that the new channel must be a substituted one. No exemption is given to any other new channel (*Midlothian C. C.* v. *Pumpherston Oil Co.* (1904), 6 F. 388).

(f) See note (o) on s. 3, *ante*, p. 1648.

cognizance of the case that he is using the best practicable and reasonably (*g*) available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

Prohibition as to drainage into streams from mines.

5. Every person (*h*) who causes to fall or flow or knowingly permits (*i*) to fall or flow or to be carried into any stream (*h*) any solid matter (*h*) from any mine in such quantities as to prejudicially (*k*) interfere with its due flow, or any poisonous, noxious, or polluting (*l*) solid or liquid matter proceeding from any mine (*m*), other than water in the same condition as that in which it has been drained or raised from such mine (*n*), shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows (*o*) to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably (*p*) available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream (*q*).

Restriction on proceedings under this Part of the Act.

6. Unless and until Parliament otherwise provides (*r*) the following enactments shall take effect: Proceedings shall not be taken against any person under this Part of this Act (*s*) save by a sanitary authority (*t*), nor shall any such proceedings be taken without the consent of the Local Government Board (*u*): Provided always, that if the sanitary authority, on the application of any person interested (*x*) alleging an offence to have been

(*g*) This word is not in s. 3. There is so much difficulty in dealing with these subjects that the manufacturer is not required to guarantee the absolute success of the means which he has adopted. He will be protected if he uses means which, in the judgment of skilled persons, may reasonably be expected to remove the mischief although they in fact do not do so. *Cf.* also note (*d*) to s. 10, *post*, p. 1656.

(*h*) See the definition in s. 20, *post*, p. 1660.

(*i*) See note (*u*) on s. 2, *ante*, p. 1645, and note (*z*) on s. 4, *ante*, p. 1649.

(*k*) It is to be observed that this word does not occur in s. 2. What is its force here? Can the due flow of the stream be interfered with otherwise than prejudicially? In mining districts this may be the case. It may be of no importance that the course of the stream is slackened, or that the channel is widened or changed. Hence it will be necessary to prove some actual prejudice to individuals from the interference. See note (*z*) on s. 2, *ante*, p. 1646, as to the due flow.

(*l*) See note (*b*), *ante*, p. 1650, with reference to these words, and the limitation as to polluting in s. 20, *post*, p. 1660.

In s. 20 it is provided that solid matter shall not include particles of matter in suspension, but such matters would appear to fall under the term liquid matters, and, if so, they would be within the provision of this section. See *United Alkali Co., Ltd.* v. *Simpson*, [1894] 2 Q. B. 116; 58 J. P. 607.

(*m*) It must be noticed that s. 2 applies to quarries. And the term mine applies to some underground work. This was the meaning given to the word in the decisions of the court upon the rating of mines.

(*n*) It will be immaterial how poisonous or polluted this water may be, so long as its original condition remains unchanged. If it come into contact with other substances in the mine which may affect its condition, the exemption will cease, and if in an altered state it flows into any stream with the knowledge and permission of the mine-owner an offence will be committed.

(*o*) See note (*o*) on s. 3, *ante*, p. 1648.

(*p*) See note (*g*), *supra.*

(*q*) Reference should be made to the saving in s. 17, *post*, p. 1659.

(*r*) These words indicate that this provision is of a tentative character, because future legislation could, of course, prevent the continuance of this enactment, and the words have in themselves no definite legal operation.

(*s*) It must be noticed that this section is limited to the cases of manufacturing pollutions and mining obstructions and pollutions.

(*t*) See the definition in s. 20, *post*, p. 1660.

(*u*) If proceedings are dropped, this consent must be obtained every time fresh proceedings are taken, although in respect of a continuance of the same pollution (*Ex parte Mersey and Irwell Watershed Joint Committee* (1893), 59 J. P. 756).

(*x*) What will constitute an interest is a question of some nicety. A riparian owner or occupier will be interested, so also will an inhabitant who draws water from the polluted stream; and it seems that if the stream be polluted within the district, the complainant

committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board (*y*), and if that Board on inquiry (*z*) is of opinion that the sanitary authority should (*a*) take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality (*b*).

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry (*c*), unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably (*d*) practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry (*e*).

Any person (*f*) within such district as aforesaid (*g*), against whom proceedings are proposed to be taken under this Part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as

need not be an inhabitant, or a ratepayer within it. But is an inhabitant of the district, as such, a person interested ? Seeing the effect of polluted streams upon the general health of a district, it will probably be held that he is.

If the object of the complainant is to obtain only a settlement of a disputed private right, the L. G. B. will doubtless refuse to interfere.

(*y*) This application should be made on folio foolscap paper, addressed to the President of the L. G. B. under cover addressed to the Secretary. It should set forth the circumstances of the case, the applicant's interest, his complaint to the sanitary authority, and their refusal. It should also communicate reasonable means of proving the alleged offence.

(*z*) The P. H. A., 1875, Part IX., *ante*, p. 622, provides for inquiries by the L. G. B.

(*a*) This implies that an offence has been committed, and that there is sufficient means of proving it. The sanitary authority are compellable to commence proceedings, but if they should refuse to do so, alleging and showing that they have not adequate means of prosecuting them with success, the High Court of Justice would probably refuse to enforce this direction.

The following part of this section shows that, notwithstanding the direction of the Board, the sanitary authority may, under certain circumstances, abstain from taking proceedings.

The consent of the Board must, however, be obtained before the notice that proceedings will be taken has been given to the party against whom they will be taken, in order to give him the opportunity of being heard against the proceedings being taken (*West Riding of Yorkshire Rivers Board* v. *Robinson Brothers*, [1907] 1 K. B. 431 ; 71 J. P. 137, overruling *West Riding of Yorkshire Rivers Board* v. *Scarr End Mill Co.* (1901), 65 J. P. 776, and following *Midlothian C. C.* v. *Oakbank Oil Co., Ltd.* (1903), 5 F. 700).

(*b*) This is only a guide to the Board, pointing out how they are to exercise their discretion, but the direction is very vague.

(*c*) These words are very vague. How are the Board to determine what is the seat of a manufacturing industry ? And what is the definition of a "manufacturing industry" ? This will be ascertained by reference to the subjects of this particular part of the Act. The industry will be such as produces the kind of pollutions here dealt with, and though only manufacturing industry is mentioned, doubtless mining industry falls within the meaning of this part of the section.

(*d*) It will be noticed that this adverb is placed before "practicable," and, therefore, governs both adjectives, but probably the effect will be the same as in the last section, upon which see note (*p*) on p. 1651.

(*e*) This consideration will frequently cause much embarrassment to the Board. The materiality of the injury will be difficult to measure.

It seems to be intended that if material injury would be inflicted by the proceedings they are not to be allowed under any circumstances.

(*f*) See the definition in s. 20, *post*, p. 1660.

(*g*) This district must be one which is the seat of a manufacturing industry.

the same relate to his works or manufacturing processes (*h*). The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses (*i*), and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities (*k*) to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

PART IV.

Administration of Law.

Sanitary authority to afford facilities for factories draining into sewers.

7. Every sanitary or other (*l*) local authority having sewers under their control shall (*m*) give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

Provided, that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view (*n*).

(*h*) It is presumed that this provision applies to mines.

(*i*) No power is given to the sanitary authority to examine these witnesses on oath; but see the Evidence Act, 1851, s. 16, which may possibly confer the power of administering oaths to witnesses upon an inquiry such as this.

(*k*) This prohibition does not apply to persons aggrieved, because they cannot take proceedings under this Part of the Act. See, however, s. 13, *post*, p. 1658.

(*l*) *Quære*, who are here referred to? The P. H. A., 1875, s. 13, *ante*, p. 45, exempts from vesting in sanitary authorities sewers made under local or private Acts of Parliament, and such as are under the authority of Commissioners of Sewers. These are probably referred to.

(*m*) Though this word is peremptory, it is presumed that the authority must have some discretion in the matter. They will, doubtless, be entitled to impose conditions and regulations as to the communications to be made with the sewers.

Moreover, it is only a liquid which is to be received. They cannot be required to receive any solid refuse, and should steadfastly refuse to do so.

No *mandamus* will be granted to compel the performance of this duty, there being a sufficient and appropriate remedy under s. 10, *post*, p. 1655. As to the extent of this obligation, see the notes to the P. H. A., 1875, s. 15, *ante*, p. 52.

The giving of facilities will not exempt the persons to whom facilities are given from the provisions of s. 4, *ante*, p. 1649 (*West Riding of Yorkshire Rivers Board* v. *Butterworth*, *ante*, p. 1650). And see generally on this subject the notes to s. 15 of the P. H. A., 1875, *ante*, pp. 49—55.

(*n*) These words, though not such as are usually to be found in a statute, appear to mean injurious to health. Having regard to the provisions of s. 16, *post*, p. 1659, the local authority cannot cut off a connection discharging trade effluent into their sewer even though the effluent prejudicially affects the disposal of the sewage matter conveyed by the sewer (*Eastwood Brothers, Ltd.* v. *Honley U. D. C.*, [1900] 1 Ch. 781; 64 J. P. 792, judgment of Byrne, J., affirmed on other grounds by the Court of Appeal, [1901] 1 Ch. 645. And see generally notes to s. 21 of the P. H. A., 1875, *ante*, pp. 77—81). In an action for an injunction, it is a question of fact whether the effluent does prejudicially affect the disposal of the sewage (*Att.-Gen.* v. *Whitmore*, Times, May 2nd, 1901). See also *Guthrie Craig, Peter & Co.* v. *Brechin Magistrates* (1888), 15 Ct. of Sess. Cas. (4th ser.), p. 385, where it was also decided that the words "application to land" were used in a general, not a special, sense, and that "sewers" meant the pipes alone, consequently the measure of the local authority's capacity is not their ability to dispose of the sewage but the capacity

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers (*o*) of such authority are only sufficient for the requirements of their district (*p*), nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.

Power of sanitary authority to enforce Act.

8. Every sanitary authority (*r*) shall, subject to the restrictions in this Act contained (*s*), have power to enforce the provisions of this Act in relation to any stream (*r*) being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority (*t*).

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875 (*u*).

38 & 39 Vict. c. 55.

Proceedings may also, subject to the restrictions in this Act contained (*x*),

of the pipes to receive it. But the decision on the latter point has not been approved by the House of Lords—see *Jonas Brook and Bros., Ltd.* v. *Meltham U. D. C.*, *infra.*

In a Scotch case under this section, where the court found as a fact that the quality of the effluent which the manufacturer proposed to discharge into the sewers was such that although in itself capable of being applied to land in certain quantities and intermittently at certain seasons with beneficial result, it would, if applied as it issued from the sewers, after mixing with the other ordinary sewage, continuously and in the quantities which the manufacturers wanted the local authority to receive, "prejudicially affect," the disposal of the sewage "by application to land," it was held that the local authority were not bound to prove that it was scientifically impossible to treat the effluent in question so as to render it innocuous to land, or by a course of experiments to discover and apply some method of treatment which would effect that object, and that upon the facts as found by the court they were entitled to refuse to receive the discharge into their sewers (*Cowie & Son* v. *Dufftown Commissioners* (1901), 3 F. 257).

It may be well to refer to the case of *St. Helen's Chemical Works* v. *St. Helen's Corporation* (1876), 1 Ex. D. 196; 40 J. P. 471. There the refuse of chemical works, harmless in itself, passed through drains into the common sewer and generated therein noxious gases. The owners of the works were held liable for the nuisance thereby caused.

(*o*) The word "sewers" means the sewage system of the district and not merely the pipes into which the sewage is received, and where sewage is passed by sewers into bacterial purification works, and such works are only sufficient for the requirements of the district, the sanitary authority cannot be required to afford a manufacturer facilities under the section (*Jonas Brook and Bros., Ltd.* v. *Meltham U. D. C.*, [1909] A. C. 438; 73 J. P. 353).

(*p*) These words prevent a manufacturer from coming into a small district, and establishing there a large new factory, and then throwing upon the rates the burden of getting rid of the trade effluent which he creates. See *per* Lord HALSBURY, C., in *Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C., on p. 396, and see further, *Jonas Brook and Bros., Ltd.* v. *Meltham U. D. C.*, *supra.*

(*r*) See the definition in s. 20, *post*, p. 1661, and the restriction as to the authority in the next section.

(*s*) See s. 13, *post*, p. 1658. See the L. G. A., 1888, s. 14, *ante*, p. 749, under which the county councils and joint committees constituted by Provisional Order under that section have also power to enforce the provisions of this Act. And see also 61 & 62 Vict. c. 34, s. 1, *post*, p. 1915, as regards Border councils.

(*t*) There may be an obstruction or pollution out of the district which will produce mischief within the district, and there may be the same within the district which may produce mischief without the district. In both of these cases the sanitary authority of the district in which the mischief is produced, subject to the proviso in s. 6, which prevents contemporaneous action by separate authorities, may take proceedings.

(*u*) See the P. H. A., 1875, Part VI., *ante*, p. 468. As regards urban authorities these expenses will be chargeable on the general district rate; as regards rural sanitary authorities they will be chargeable as general expenses.

(*x*) See s. 6, *ante*, p. 1651, which restricts proceedings with reference to offences under Part III. to sanitary authorities, and see the other restrictions contained in s. 13, *post*, p. 1658. It does not appear that the consent of the L. G. B. is required to the proceedings to be taken by any person aggrieved.

be instituted in respect of any offence against this Act by any person aggrieved (*y*) by the commission of such offence.

9. The Conservancy Board constituted under the Lee Conservancy Act, 1868, shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act.

Power of Lee Conservancy Board to enforce Act. 31 & 32 Vict. c. cliv.

The said Conservancy Board may also enforce the provisions of the Lee Conservancy Act, 1868, under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

(1) *Legal Proceedings.*

10. The county court having jurisdiction in the place (*z*) where any offence against this Act is committed may by summary order (*a*) require any person to abstain from the commission of such offence, and where such offence

Offences to be restrained by summary order of county court.

(*y*) Who will be a person aggrieved? In s. 6, there is a provision for a person interested. Persons living near a steam-engine, and affected by the smoke, were held to be persons aggrieved within the meaning of 5 & 6 Will. 3, c. 11, s. 3 (*R.* v. *Dewsnap* (1812), 16 East, 194); so also a person annoyed by offensive smells and vapours (*R.* v. *Williams* (1845), 6 Q. B. 273; 15 L. J. Q. B. 98 n).

It seems that these proceedings may be taken in addition to those taken by the sanitary authority because the person aggrieved may require some special provision for his benefit. At the same time such person is not prevented from resorting to the remedies which the law otherwise provides. See s. 16, *post*, p. 1659.

(*z*) It may become necessary in some cases to determine this place where there are separate jurisdictions. Thus, the act of putting something in the stream may cause the obstruction in a different district, and in a different jurisdiction. All the liquid cast into the stream may be innocuous until it reaches a spot in a different jurisdiction. It seems, however, that reference must be made to the place where the act was done. See, upon this point, *R.* v. *Cotton* (1858), 1 El. & El. 203; *Brown* v. *Bussell; Francombe* v. *Freeman* (1868), L. R. 3 Q. B. 251; 32 J. P. 196.

(*a*) Although these words point to an injunction only, it appears from the rest of the clause that the order may be something more. The order is in the nature of an injunction, and is in the discretion of the court (*Kirkheaton District L. B.* v. *Ainley & Co., ante*, p. 1647). And see *West Riding of Yorkshire Rivers Board* v. *Butterworth, ante*, p. 1650. The order is equivalent to a judgment for the purposes of estoppel, and the defendants against whom it is made cannot in further proceedings for the enforcement of the order dispute the commission of the offence, or contend that the order, so far as it applies to the *locus in quo*, was made without jurisdiction (*River Ribble Joint Committee* v. *Croston U. D. C.*, [1897] 1 Q. B. 251).

The county court is not justified in the exercise of its judicial discretion under this section in refusing to make an order restraining the discharge of sewage into a stream in contravention of s. 3, where the discharge would appreciably pollute the stream were it otherwise pure, merely because the pollution of the stream from other sources prevents the pollution due to the particular discharge from being appreciable (*Staffordshire C. C.* v. *Seisdon R. D. C.* (1907), 71 J. P. 185; 96 L. T. 328. See also *Hainesworth* v. *West Riding of Yorkshire Rivers Board* (1902), 5 L. G. R. 356 n).

A summary order was made in the county court under this section requiring the offender to abstain from the commission of an offence against this Act. On an application for penalties for making default in complying with a requirement of the order, it was *held* that two months' written notice, under s. 13, *post*, of the intention to take proceedings need not be given to the offender (*West Riding of Yorkshire Rivers Board* v. *Heckmondwike U. D. C.* (1914), 78 J. P. 190).

As to costs, see County Court Rules, Order LIII., rr. 8, 45; and *Bates* v. *Gordon Hotels, Ltd.*, [1913] 1 K. B. 631.

consists in default to perform a duty under this Act (*b*) may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may if it think fit, remit to skilled parties (*c*) to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report (*d*).

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section (*e*) shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month (*f*) or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order; and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court (*g*).

Appeal from county court, and removal of case into High Court.

11. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on

(*b*) No part of this Act assigns any duty to be performed unless the provision in s. 7, *ante*, p. 1653, can be brought within the terms. But the provision of the section contemplates that the judge of the county court will not always absolutely prohibit the act complained of, but may, in some cases, make an order prescribing that the works may be carried on in such a manner as will prevent the recurrence of the evil. He may give a limited time during which the defendant may provide for the removal of his works, or adopt such means as will, according to the judgment of the court, remove the nuisance.

(*c*) *I.e.*, to special referees, such as chemists, engineers, or other scientific persons. This remission is optional with the court, and as the section makes no provision for the costs of this report, which will be usually for the benefit of the defendant, the court, before the matter is remitted, may probably require the defendant to undertake to pay those expenses.

(*d*) The precise meaning of these words is, perhaps, not altogether obvious, but it appears to be intended that the referees shall report that the expenses will be such that the defendant might reasonably be called upon to incur them, or that they would be such that it would be unreasonable that he should be required to undertake them. Indeed, the expenses might in some cases render it impossible for the manufacturer to continue his business.

It must be noticed that the word "reasonably" introduced in s. 4 before "available," and in s. 5 before "practicable," is omitted here, but doubtless the referees will be guided by a consideration of what is reasonable in regard to the works.

(*e*) This will occur where the judge of the county court either makes an order directing an absolute abstention from the continuance of the offence, or makes an order specifying certain works to be executed.

This part of this section sets out the means of prohibiting the offences which have been described in the former Parts of the Act. The penalty is incurred when an order of the court is disobeyed.

(*f*) This means calendar month. See the Interpretation Act, 1889, s. 3.

(*g*) This amount will in many cases far exceed the amount imposed as the limit of the jurisdiction of the county court; nevertheless the action may be brought therein. See *R.* v. *Harden* (1854), 2 El. & Bl. 189; 22 L. J. Q. B. 299; *Hertford Union Guardians* v. *Kimpton* (1856), 11 Ex. 295; 25 L. J. M. C. 41.

the merits (*h*), or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice.

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys (*i*), and, if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.

The court of appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments rules and orders relating to proceedings in actions in county courts (*k*), and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint (*l*) entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court (*m*), if it appears to such judge desirable in the interests of justice (*n*) that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

Certificate of inspector of Local Government Board as to best practicable means.

12. A certificate granted by an inspector of proper qualifications (*o*) appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all courts

(*h*) These words appear to apply to the facts of the case as shown by the evidence, and probably also to the requirement made by the judge of the county court. It may be contended before the High Court that the facts proved did not justify the finding of the judge, or if he shall have made an order requiring anything to be done, that such order would not be reasonable or practicable.

Again, the complaining party may urge that their complaint has been improperly dismissed.

(*i*) This alternative appears to be given, because in the county court the parties may appear in person, and the provision is copied from 26 & 27 Vict. c. 74, s. 14, but it is not likely that the parties will often appear in these proceedings in person. Indeed, the sanitary authorities cannot do so.

The appeal is, by s. 124 of the County Courts Act, 1888, brought within the operation of s. 120 of that Act, and is properly brought by way of motion (*Kirkheaton District L. B.* v. *Ainley & Co.*, *ante*, p. 1647).

(*k*) A proceeding under s. 10 for a summary order is civil, not criminal, and therefore discovery and interrogatories may be allowed (*Derby Corporation* v. *Derbyshire C. C.*, [1897] A. C. 550; 62 J. P. 4).

(*l*) This word explains how the proceedings are to be taken in the county court.

(*m*) Apparently one of the parties only may make the application to the judge, though the other party must be summoned to appear at the hearing.

(*n*) These are rather indefinite words. They seem to imply that by reason of prejudice or undue interest in the court, either on the part of the judge or the jury, the case cannot be fairly tried in the county court. But it is presumed that the judge would also be moved by the gravity of the question at issue, or its difficulty.

The section does not proceed to declare what can be done by the High Court, but doubtless it will be the same as can be done by the county court.

In *West Riding of Yorkshire Rivers Board* v. *Ravensthorpe U. D. C.* (1907), 71 J. P. 209, an application for transfer was refused on the ground of expense and because a local investigation would be precluded by acceding to it.

(*o*) It is for the Board to determine what are the proper qualifications. It is not open to any of the general inspectors of the department to give the certificate, as the inspector must be specially appointed for this purpose. At present there seem to be no inspectors appointed by the Board for this purpose.

This certificate would be available under ss. 3—5.

and in all proceedings under this Act be conclusive evidence of the fact (*p*); such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period (*q*).

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal (*r*) to the Local Government Board against the decision of the inspector; and the Board (*s*) may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just.

Restriction on proceedings for offences.

13. *Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act* (*t*)*;* nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice (*u*) of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending (*y*).

Orders as to costs of inquiries.

14. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne (*z*); and every such order and every order for the payment of costs made by the said Board under section twelve of this Act may be made a rule of her Majesty's High Court of Justice.

(*p*) It must be carefully noted that the certificate will only have this effect in proceedings under this Act, though it is to be available to some extent in other proceedings. See s. 16, *post*, p. 1659.

(*q*) It does not appear that it can be revoked or recalled before the expiration of the period.

(*r*) This appeal should be made in writing upon folio foolscap paper addressed to the President or Secretary of the Board. No special form has been prescribed.

If the local authority appeal, the same may be made under their common seal or under the hand of their clerk.

No time is prescribed for the appeal, but it should be made promptly after the decision.

(*s*) No precise rule of action is prescribed, and the Board will follow their usual practice of receiving the appeal in writing, communicating it to the other party, and having received an answer, and also communicated with the inspector, will give their decision. There is no need of an order for this decision, though there must be one for the costs if awarded. It is presumed that the costs here referred to are those of the parties. As to the recovery of such costs, see s. 14, *infra*.

(*t*) This paragraph being temporary in its application was repealed by the S. L. R. A., 1883.

(*u*) In the case of proceedings under Part III. of this Act this notice cannot be given until the consent of the L. G. B. under s. 6, *ante*, p. 1651, has first been obtained. See *West Riding of Yorkshire Rivers Board* v. *Robinson*, *ante*, p. 1652. Care must be taken to secure the proper service of this notice, as the statute does not supply any statement of what shall be sufficient service. In general the notice should be signed by the clerk of the sanitary authority proposing to proceed where such authority proceeds. In the case of a proceeding by a person aggrieved the notice will be sufficient if given by his solicitor or agent.

(*y*) See *West Riding of Yorkshire Rivers Board* v. *Heckmondwike U. D. C.* (1914), 78 J. P. 190. This prohibition is in addition to that in s. 6, *ante*, p. 1651, which refers to proceedings under this Act, and the object of this enactment is to prevent the party from being oppressed by a variety of proceedings. But *quære*, what proceedings are referred to?

(*z*) See the P. H. A., 1875, s. 294, *ante*, p. 623. It will be observed that this part of the section is confined to the costs incurred by the Board.

15. Inspectors of the Local Government Board shall, for the purpose of any inquiry directed by the Board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which the inspectors of the said Board have under the Public Health Act, 1875, for the purposes of that Act (*a*). Power of inspectors of Local Government Board. 38 & 39 Vict. c. 55.

(2) *Saving Clauses.*

16. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed (*b*); and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act (*c*). Powers of Act cumulative.

17. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water (*d*). Saving of rights of impounding and diverting water.

18. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by the Thames Conservancy Acts, 1857 and 1864, or by the Thames Navigation Act, 1866 (*e*), or by the Lee Conservancy Saving of certain Conservancy Acts.

(*a*) See the P. H. A., 1875, s. 296, *ante*, p. 625. The powers are such as were given to poor law inspectors under 10 & 11 Vict. c. 109, ss. 20, 21.

(*b*) Hence persons specially aggrieved by any acts which would of themselves constitute the offences herein described may pursue the remedies which the law provides for them, as by injunction or indictment. In many cases also such offences are the subject of specific provisions in local Acts. The Waterworks Clauses Act, 1847, ss. 61—67, *ante*, pp. 1420—1421, relating to waterworks, incorporated with the P. H. A., 1875, by s. 57, *ante*, p. 129, also contains provisions prohibitory of some of them, and the customs of certain ancient courts and of the Commissioners of Sewers also apply to them. All these provisions are preserved. See also the provisions of the P. H. A., 1875, s. 69, which enables local authorities to take proceedings to prevent the pollution of streams, and s. 117 which enables them to bring actions in respect of nuisances.

Whether the pursuit of these remedies will prevent the adoption of the remedies given by this Act will depend upon the construction of the last proviso in s. 13, *supra*.

This section only saves rights to prevent pollution and not rights to pollute as against other riparian owners (*Midlothian C. C.* v. *Oakbank Oil Co.* (1904), 6 F. 388).

(*c*) See s. 12, *ante*, p. 1657. Although this certificate is to be thus considered, the court are not bound to give any particular weight to it. Probably without this enactment it could have been brought under the notice of the court by affidavit or otherwise. However, it cannot now be rejected as irrelevant.

(*d*) This is an important section, and prevents the operation of the prohibitory clauses of the Act to the extent which the generality of the language would have effected. If the general terms of those sections were considered it might have been found that rights relating to water would be improperly and unnecessarily interfered with.

Thus, a miller or other person may throw rubbish or waste into a stream to divert the course where he has a right to such diversion, or where he desires to impound the water, and if the act be done with any such object this section appears to exempt him from the provisions of the Act. The right to impound implies the right to return the water after impounding, although it may have become putrid by the impounding (*River Ribble Committee* v. *Halliwell*, [1899] 2 Q. B. 385; 63 J. P. 708).

It is, however, to be carefully noticed that it is only where there is the right described that this exception takes effect; and further, that no excessive deposit nor any negligence or unnecessary action in this respect will be excused.

(*e*) The Thames Conservancy Acts, 1857 and 1864; and the Thames Navigation Act, 1866, are now wholly repealed and replaced by the Thames Conservancy Act, 1894.

Act, 1868 (*f*), or any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis) executed under the Metropolis Management Act, 1855 (*g*), and the Acts amending or extending the same, or take away abridge or prejudicially affect any right power authority jurisdiction or privilege of the Metropolitan Board of Works.

18 & 19 Vict. c. 120.

Saving of works of certain local authorities.

19. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment, shall be deemed to be an offence against this Act (*h*).

(3) *Definitions.*

Definitions.

20. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

"Person" includes (*i*) any body of persons, whether corporate or unincorporate (*k*):

"Stream" includes (*l*) the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds (*m*), be determined by the Local Government Board, by order published in the London Gazette. Save as aforesaid, it includes rivers streams canals lakes and watercourses, other than watercourses at the passing of this Act mainly used as sewers (*n*), and emptying directly into the

(*f*) 31 & 32 Vict. c. cliv.: see now also 37 & 38 Vict. c. xcvi., 49 & 50 Vict. c. cix, 55 & 56 Vict. c. cli, and 63 & 64 Vict. c. cxvii.

(*g*) See 18 & 19 Vict. c. 120. The powers and duties of the Metropolitan Board of Works were transferred to the London C. C. by 51 & 52 Vict. c. 41, s. 40.

(*h*) It is presumed that the Act referred to has made due provision for the prevention of the pollutions herein dealt with; but, independently of this section, this Act would not have applied to these, unless the L. G. B. acted under the next section, which would hardly have occurred against a statutory licence. And see *Somersetshire Drainage Commissioners* v. *Bridgwater Corporation* (1898), 81 L. T. 729.

(*i*) This word has an extending meaning, and does not exclude the other significations of the term defined (*R.* v. *Kershaw* (1857), 6 El. & Bl. 1007; *Doe* v. *Benham* (1845), 7 Q. B. 979).

(*k*) Hence partnerships and associations are included.

(*l*) This is not so much a definition as an enactment that the L. G. B. shall determine how much of the sea and of tidal waters shall be brought within the operation of this Act. See also next note.

Tidal waters appear to signify those parts of rivers in which the tide ebbs and flows, as estuaries are covered by the term sea. It would seem that the expression tidal waters is not confined to those waters where there is a horizontal ebb and flow only, but may include waters in which there is only a vertical rise (*West Riding of Yorkshire Rivers Board* v. *Tadcaster U. D. C.* (1907), 71 J. P. 429; 97 L. T. 436). *Cf. Reece* v. *Miller* (1882), 8 Q. B. D. 626; 47 J. P. 37. As to depositing solid matter in harbours, etc., see *United Alkali Co., Ltd.* v. *Simpson, ante*, p. 1651.

As to the rights of riparian owners in tidal rivers, see *Lyon* v. *Fishmongers Co.* (1876), 1 App. Cas. 662.

Water percolating through the ground in no defined or visible channel is not a stream (*McNab* v. *Robertson*, [1897] A. C. 129; 61 J. P. 468).

(*m*) By these words it is probably intended that the Board are not to have any consideration of the Customs, Admiralty, or other regulations, except so far as they coincide with the sanitary necessities of the districts. The following are instances of orders made by the L. G. B. under the section dealing with tidal portions of rivers, viz.: in 1902, Willington Gut, Willington Burn, and Wallsend Burn; in 1897, parts of the rivers Avon and Stour (Hants); in 1890, part of the Medway.

It will be well to refer to the provisions respecting port sanitary districts in the P. H. A., 1875, *ante*, p. 618.

(*n*) See *Portobello Magistrates* v. *Edinburgh Magistrates, ante*, p. 1649. As to when a stream may become a sewer, see *Falconar* v. *South Shields Corporation* (1895), 11 T. L. R.

sea, or tidal waters which have not been (*o*) determined to be streams within the meaning of this Act by such order as aforesaid :

"Solid matter" shall not include particles of matter in suspension in water (*p*) :

"Polluting" shall not include innocuous discoloration :

"Sanitary authority" means—

In the metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same (*q*) : 18 & 19 Vict. c. 120. 18 & 19 Vict. c. 121.

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875 (*r*). 38 & 39 Vict. c. 55.

* * * * *

THE LIMITED OWNERS RESERVOIRS AND WATER SUPPLY FURTHER FACILITIES ACT, 1877.

(40 & 41 VICT. c. 31.) (*s*)

An Act to give further facilities to Landowners of limited interests in England and Wales and Ireland to charge their estates with the expenses of constructing Reservoirs for the Storage of Water, and other similar purposes.

[2nd August 1877.]

1. This Act may be cited as the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877. Short title.

2. This Act shall not extend to Scotland (*t*). Extent.

3. This Act shall be incorporated with the Improvement of Land Act, 1864, and the two Acts shall be read together as one Act. Construction. 27 & 28 Vict. c. 114.

4. The provisions of the Waterworks Clauses Act, 1863, with respect to the security of the reservoirs constructed by the undertakers (*u*) are incorporated with this Act; and in that Act, as incorporated with this Act, the expression "the special Act" shall mean and include the Improvement of Land Act, 1864, and this Act; and the expression "the undertakers" Certain provisions of 26 & 27 Vict. c. 93, incorporated. 27 & 28 Vict. c. 114.

223; *West Riding of Yorkshire Rivers Board* v. *Gaunt*, *ante*, p. 1649; *West Riding of Yorkshire Rivers Board* v. *Preston*, *ante*, p. 1649; *West Riding of Yorkshire Rivers Board* v. *Yorkshire Indigo, Scarlet and Colour Dyers, Ltd.*, *ante*, p. 1649; *Glasgow, Yoker and Clydebank Rail. Co.* v. *Macindoe* (1896), 24 Ct. of Sess. Cas. (4th ser.) 160; *Airdrie Magistrates* v. *Lanarkshire C. C.*, [1910] A. C. 286; *Att.-Gen.* v. *Lewes Corporation*, *ante*, p. 1650; *Shepherd* v. *Croft*, [1911] 1 Ch. 521.

(*o*) Or rather "which shall not be."

(*p*) It is believed that these words have a technical meaning in chemistry. However, disintegrated matters which do not sink, but float in water, such as the fibres of the pulp of paper, appear to fall within this definition. But if they coagulate in water and cease to be particles, they will lose the exemption. And see *River Ribble Committee* v. *Halliwell*, *ante*, p. 1646.

(*q*) These Acts are all repealed and re-enacted by the P. H. (London) A., 1891.

(*r*) See the P. H. A., 1875, ss. 5, 6, 9, *ante*, pp. 37, 40. Parts V. and VI. of this Act, relating only to the application of the Act to Scotland and Ireland are here omitted.

(*s*) The preamble to this Act has been repealed by the S. L. R. A., 1894. See also s. 4 of that Act as to the omission of the clause of enactment. The effect of this Act and its bearing upon the subject of public health have already been stated in the notes to s. 51 of the P. H. A., 1875, *ante*, p. 117. It has been thought advisable to set out here the full text of the Act. See also 60 & 61 Vict. c. 44, *post*, p. 1903.

(*t*) But see now 62 & 63 Vict. c. 46, s. 2.

(*u*) See 26 & 27 Vict. c. 93, ss. 3—10, *ante*, pp. 1489, 1490.

shall mean any person who constructs or erects any reservoir or dam under the authority of either of the last-mentioned Acts.

What to be deemed improvements within 27 & 28 Vict. c. 114.

5. The construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply of water to any sanitary or other local authority or water company, or to any manufacturer or other person, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of the ninth section of the Improvement of Land Act, 1864, and shall be sanctioned by the Commissioners (*x*), if it can be shown to their satisfaction that such reservoirs or works for the supply of water will for any purpose effect a permanent yearly increase in the value of the lands on which they are situate, or any other lands settled to the same uses, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon (*y*); and the construction of any such works shall be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid.

27 & 28 Vict. c. 114.

In calculating whether the improvement is likely to effect a permanent increase of the yearly value of the land, or be productive of a yearly revenue to the landowner exceeding the yearly amount proposed to be charged thereon, it shall be lawful for the Commissioners (*x*) to take into account the value of any contract, the terms of which have been agreed upon between the landowner and any sanitary or other local authority, or water company, or manufacturer or other persons, for the purpose of supplying such authority company person or persons with water, as well as the effect on such value or revenue of any sum expended by the landowner in the construction of the works over and above the sum proposed to be charged upon the land.

When the improvement will afford a supply of water to persons residing or engaged in labour on the lands on which the proposed works will be situate, or on any other lands settled to the same uses, the Commissioners (*x*) may, if they think fit, sanction the improvement, although it may not be shown that the same will effect a direct yearly increase in the value of the lands, or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon (*z*).

Supply of water to local authority, etc.

6. Any landowner charging or proposing to charge (*y*) his estate with the cost of the construction of reservoirs or other works for the supply of water under this Act may enter into any agreement for the supply of water to any sanitary or other local authority, water company, manufacturer, or other person, for any term not exceeding the number of years during which the cost of the improvement, or any part of it, is made a charge upon the estate: Provided that every such agreement be approved by the Commissioners (*x*), and that no premium or benefit in the nature of a premium be reserved thereby by the landowner.

Power to contract for execution of reservoir, etc.

7. Any company now authorised to contract with landowners in England or Wales . . . (*a*) for the execution of any works for the improvement of land, or to make advances for the purpose of executing or assisting in the execution of such works, may, with the approval of the Commissioners (*x*),

(*x*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*y*) As to charging estates with the cost of improvements, see the Improvement of Land Acts, 1864 and 1899.

(*z*) Compare the District Councils (Water Supply Facilities) Act, 1897, s. 4, *post*, p. 1904.

(*a*) Words relating to Ireland only are here omitted.

contract with any such landowner for the execution of any reservoirs or works of water supply, the cost of which may by this Act be charged upon the estates of such landowner, and may, with the like approval, make advances for the purpose of executing or assisting in the execution of such reservoirs or works; and for this purpose the execution of any such reservoirs or works shall be deemed to be an improvement of land within the meaning of any Act of Parliament or articles of association relating to any such company.

8. Any landowner desiring to charge (*b*) his estates with subscriptions for the construction of waterworks by a water company (*c*) may charge his estates with such moneys on the same terms and conditions as he may under the Improvement of Land Act, 1864, charge his estates with moneys subscribed for the construction of railways or navigable canals; and for this purpose the provisions contained in sections seventy-eight to eighty-nine, both inclusive, of the Improvement of Land Act, 1864, shall apply, mutatis mutandis, to such subscriptions, as if the same had been subscribed for the construction of a railway or navigable canal.

Subscriptions to waterworks.

27 & 28 Vict. c. 114.

9. Nothing in this Act shall be construed to authorise any landowner, or any water company, local authority, person or persons authorised by any landowner, to injuriously affect any reservoir canal river stream or navigation, or the feeders thereof, or the supply quality or fall of water contained in any reservoir canal river stream or navigation, or in the feeders thereof, or any other water rights or easements in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream navigation feeders, or such supply quality or fall of water, or other water rights or easements, unless the landowner, water company, local authority, person, or persons first obtain the consent in writing of the body of persons or person so entitled as aforesaid (*d*).

Protection of rights.

10. In this Act the following words and expressions shall have the following meanings; that is to say,

Definitions.

"The Commissioners" means the Inclosure Commissioners of England and Wales. . . . (*e*):

"Works for the supply of water" includes wells, pumps, reservoirs, cisterns, ponds, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, machinery, and things for supplying or used in supplying water:

"Water company" means any person or body of persons, corporate or unincorporate, supplying or who may hereafter supply water for his or their own profit:

"Local authority" means any authority having jurisdiction for any public local purpose:

The several words and expressions to which by the Improvement of Land Act, 1864, meanings are assigned, shall in this Act have the same respective meanings as in that Act.

(*b*) See note (*y*), *ante*, p. 1662.

(*c*) As to charging the estate with contributions towards expenses incurred by any district council in supplying water, see the District Councils (Water Supply Facilities) Act, 1897, *post*, p. 1903.

(*d*) Compare the Improvement of Land Act, 1864, s. 46.

(*e*) Words relating to Ireland only are here omitted. The Inclosure Commissioners became, under the Settled Land Act, 1882, s. 48, the Land Commissioners for England, and the powers and duties of the Land Commissioners for England under this Act were together with their other powers and duties transferred to the Board of Agriculture by the Board of Agriculture Act, 1889, s. 2, and that Board is now styled the Board of Agriculture and Fisheries. See 3 Edw. 7, c. 31, s. 1.

THE CANAL BOATS ACT, 1877.

(40 & 41 VICT. c. 60.) (*f*).

An Act to provide for the Registration and Regulation of Canal Boats used as Dwellings. [14th August 1877.]

Registration of canal boat as a dwelling.

1. *After the expiration of twelve months after the commencement of this Act, or if the regulations of the Local Government Board hereinafter mentioned have not at that time come into force, then after the expiration of six months from the date at which they have come into force* (*g*), a canal boat shall not be used as a dwelling unless it has been registered in accordance with this Act.

The owner of a canal boat may register that boat with the registration authority hereinafter mentioned (*h*) as a dwelling for such number of persons of the specified age and sex as may be allowed under the provisions of this Act; and the boat shall be used as a dwelling only for the number of persons of the age and sex for which it is registered.

If a canal boat is used as a dwelling in contravention of this Act, the master of the boat, and also the owner of the boat, if he is in fault, shall each be liable to a fine not exceeding twenty shillings for each occasion on which the boat is so used.

Local Government Board to make regulations.

2. The Local Government Board shall make regulations (*i*), and may from time to time revoke and vary such regulations—

(1) For the registration of canal boats under this Act, including certificates of registration, and the fees in connection with such registration; and

(2) For lettering, marking, and numbering of such boats; and

(3) For fixing the number age and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat; and

(4) For promoting cleanliness in and providing for the habitable condition of canal boats; and

(5) For preventing the spread of infectious disease by canal boats (*j*).

The registration authority shall register every canal boat which conforms to the conditions of registration provided by the said regulations for the number of persons allowed by those regulations to dwell therein.

Certificate of registry and lettering and numbering of boats.

3. Upon the registry of a boat under this Act, the registration authority shall give to the owner thereof two certificates of registry, identifying the owner and the boat, and stating the place to which the boat is registered as belonging, and the number age and sex of the persons allowed to dwell in the boat, and such other particulars as may be provided by regulations under this Act, or may seem fit to the registration authority, and the master shall have the care of one of such certificates (*k*).

Every canal boat when registered shall be lettered marked and numbered

(*f*) See the amending Act, the Canal Boats Act, 1884, *post*, p. 1789.

(*g*) The words in italics at the commencement of this section have been repealed by the S. L. R. A., 1894.

(*h*) See s. 7, *post*, p. 1666. It will be observed that the owner has the choice of several authorities with whom to register. For the definition of *owner*, see s. 14, *post*, p. 1668.

(*i*) Regulations have been made under this section, and will be found in App. II., *post*, p. 2203. As to default in compliance with these regulations, see the Canal Boats Act, 1884, s. 2, *post*, p. 1789.

(*j*) See s. 4, *post*.

(*k*) This certificate is made void by structural alterations in the boat. See the Canal Boats Act, 1884, s. 1, *post*, p. 1789.

in some conspicuous manner (as directed by the regulations made under this Act), and such lettering marking and numbering shall include the word "registered" and the name of the place to which the boat is registered as belonging, and the registered number (*l*).

Any boat not lettered marked and numbered in conformity with this section, or having the letter mark or number altered defaced or obliterated, shall be deemed, for the purposes of this Act, to be an unregistered canal boat (*m*).

4. Where any sanitary authority within whose district a canal or any part of a canal is situate is informed by the master of a canal boat or otherwise that a person on a canal boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may by the certificate of their medical officer of health, or of any other legally qualified practitioner, appear requisite for preventing the said disorder from spreading, and for that purpose may exercise the power of removing a person suffering as aforesaid, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875 (*n*), and may also, if need be, detain the boat; but such boat shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

Power of sanitary authority for prevention of infectious disease in canal boats.

38 & 39 Vict. c. 55.

5. Where any person duly authorised by a registration or sanitary authority, or by a justice of the peace, has reasonable cause to suppose, either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may, on producing (if demanded) either a copy of his authorisation, purporting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorised as aforesaid, enter by day (*o*) such canal boat and examine the same and every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act, or a person suffering from an infectious disorder, and may, if need be, detain the boat for the purpose, but for no longer time than is necessary.

Authorised person may enter boat, etc.

The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such person under this section shall be deemed to be an obstruction of such person.

If such person is obstructed in the performance of his duty under this Act in the case of any boat, the person so obstructing shall be liable to a fine not exceeding forty shillings.

6. A child in a canal boat registered in pursuance of this Act, and his parent, shall for the purposes of the Elementary Education Acts, 1870, 1873, and 1876, be deemed, subject as hereinafter mentioned, to be resident in the place to which the boat is registered as belonging (*p*), and shall be subject accordingly to any byelaw in force under the said Acts in that place.

Education of children. 33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79.

(*l*) The name of the school district referred to in s. 7, *post*, need not be painted on the boat.

(*m*) The boat must be lettered on both sides or on the stern, so as to be visible from both sides of the canal. See the Canal Boats Act, 1884, s. 7, *post*, p. 1790.

(*n*) See the P. H. A., 1875, s. 124, *ante*, p. 228, extended to ships by the Public Health (Ships, etc.) Act, 1885, *ante*, p. 723. See also the provisions of the Infectious Disease Notification Act, 1889, s. 13, extending to vessels, boats, etc.

(*o*) *I.e.*, between 6 a.m. and 9 p.m. (47 & 48 Vict. c. 75, s. 9, *post*, p. 1791).

(*p*) See the next section.

Provided, that if the parent satisfies the school board or school attendance committee having authority in that place, that the child is actually attending school, or is under efficient instruction in accordance with the said Acts, in some other school district, the said board or committee shall grant him without charge a certificate to that effect, and thereupon he and his child shall be deemed for the purposes aforesaid to be resident in the school district in which the child is so attending school, or under efficient instruction, and shall be subject to any byelaw in force therein.

The said certificate may on application by the parent be rescinded or varied by the school board or school attendance committee for the place to which the boat is registered as belonging, and may be rescinded without application by any such board or committee, if they are satisfied, after due notice to the parent, that his child is not properly attending school or under efficient instruction in the school district mentioned in the certificate.

Registration authority.

7. For the purpose of the registration of canal boats the registration authority shall be such one or more of the sanitary authorities having districts abutting on a canal as may from time to time be prescribed by regulation of the Local Government Board.

A canal boat shall be registered with some registration authority having a district abutting on the canal on which such boat is accustomed or intended to ply (*q*).

33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79.

With a view of determining the place to which a canal boat belongs, for the purpose of the Elementary Education Acts, 1870, 1873, and 1876, the registration authority shall register any canal boat in respect of which an application is made for registration as belonging to some place which is either a school district or is part of a school district, and is situate wholly or partly within the jurisdiction of the registration authority with which it is registered.

Expenses of sanitary authority.

8. The expenses incurred in the execution of this Act by a local authority shall be defrayed as follows:

(1) When they are incurred by an urban sanitary authority, a rural sanitary authority, or a port sanitary authority, they shall be defrayed out of the fund or rate out of which the expenses of such authority, as a sanitary authority under the Public Health Act, 1875 (*r*), are defrayed: Provided, that when they are incurred by a rural sanitary authority they shall be deemed to be general expenses (*s*); and

38 & 39 Vict. c. 55.

(2) When they are incurred by a vestry or district board in the metropolis they shall be defrayed as expenses incurred by such vestry or board in the execution of the Metropolis Management Act, 1855, and the Acts amending the same.

18 & 19 Vict. c. 120.

Regulations to be laid before Parliament.

9. An order of the Local Government Board making revoking or varying any regulation in pursuance of this Act shall not come into force until it has lain in a complete form as settled and approved by the Board for forty days before both Houses of Parliament during the session of Parliament.

The Local Government Board shall take steps for enabling all persons interested in any regulations made by that Board in pursuance of this Act to obtain copies thereof at such places in the neighbourhood of canals as the Local Government Board may prescribe, on payment of such sum not exceeding sixpence as may be prescribed by that Board (*t*).

(*q*) This gives the owner the choice of the place of registration.
(*r*) That is, out of the district fund. See s. 207 of the P. H. A., 1875, *ante*, p. 468.
(*s*) See *ante*, p. 509. As to the duty of the local authority to enforce the Act and regulations under it, see the Canal Boats Act, 1884, s. 3, *post*, p. 1790.
(*t*) See the regulations of the L. G. B., dated September, 1878, and November, 1879,

10. If the master of any canal boat illegally detains the certificate of registry of such boat, he may, on summary conviction before two justices, be directed by order of such justices to deliver up such certificate, and shall, in addition thereto, be liable to a fine not exceeding forty shillings, and the justices may direct any part of such fine to be paid to the person injured by the detention of such certificate. Illegal detention of certificate of registry.

11. All fees paid in respect of registration under this Act shall be carried to the fund or rate out of which the expenses incurred in the execution of this Act by the authority making such registration are by this Act declared to be payable (*u*). Application of fees under this Act.

12. Any company or association, corporate or unincorporate, being the owners of any canal boats, or being the owners lessees or undertakers of any canal, may, with the assent of a special resolution of their members, and notwithstanding any Act of Parliament, charter, or document regulating the funds of the company or association, appropriate any portion of their funds to the establishment and maintenance, or establishment or maintenance, of a school or schools wherein the children of the persons employed in canal boats may be lodged maintained and educated, or educated only; with this restriction, that the children shall not be maintained gratuitously, but the lodging or education may be wholly or partially gratuitous. Power of canal company, etc. to establish schools.

A " special resolution " shall for the purposes of this Act mean a resolution passed in manner provided by the fifty-first section of the Companies Act, 1862. 25 & 26 Vict. c. 89.

13. Offences under this Act may be prosecuted, and fines under this Act may be recovered on summary conviction before two justices having jurisdiction, either in the place to which the boat in respect of which the offence was committed is registered as belonging, or in the place where the offence is committed, or in the place where the alleged offender for the time being is, in manner provided by the Summary Jurisdiction Act, 1848 (*x*). Recovery of penalties. 11 & 12 Vict. c. 43, etc.

14. In this Act, unless the context otherwise requires— Definitions.

The expression " sanitary authority " means an urban sanitary authority, a rural sanitary authority, or port sanitary authority: Provided, that in the case of the parishes mentioned in Schedule A. and the districts mentioned in Schedule B. to the Metropolis Management Act, 1855, so far as they are not within the jurisdiction of a port sanitary authority, the vestry of any such parish and the district board of any such district elected under the Metropolis Management Act, 1855, and the Acts amending the same, shall be deemed to be sanitary authorities, and where other sanitary authorities are by this Act empowered to exercise powers conferred by the Public Health Act, 1875, may exercise similar powers conferred by any Act of Parliament extending to such parishes or districts: 18 & 19 Vict. c. 120. 38 & 39 Vict. c. 55.

The expression " parent " includes guardian, and every person who is liable to maintain or has the actual custody of any child:

The expression " urban sanitary authority " and " rural sanitary authority " and " port sanitary authority " have the same meaning as in the Public Health Act, 1875 (*y*): 38 & 39 Vict. c. 55.

prescribing places and fixing prices for sale of regulations (Glen's Local Government Orders, pp. 473 and 478), and further regulations dated July, 1887.

(*u*) See s. 8, *supra*.

(*x*) *Sic* in the second edition of the Statutes Revised, but it ought to be " the Summary Jurisdiction (England) Acts," because in the original statute not only is the Act of 1848 referred to by its long title, but also " the Acts amending the same." See the Interpretation Act, 1889, s. 13 (7). Fines are to be paid to the registration or sanitary authority. See the Canal Boats Act, 1884, s. 8, *post*, p. 1790.

(*y*) *Ante*, pp. 37, 618.

The expression "canal" includes any river, inland navigation, lake, or water being within the body of a county, whether it is or not within the ebb and flow of the tide:

The expression "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal as above defined, and which is not a ship duly registered under the Merchant Shipping Act, 1854, and the Acts amending the same (z):

17 & 18 Vict. c. 104.

The expression "owner" includes a person who, though only the hirer of a canal boat, appoints the master and other persons working such boat.

The expression "master" in relation to a canal boat means the person having for the time being command or charge of the boat.

15. [*Commencement of Act.*] (*a*)

Extent.

16. This Act shall not extend to Scotland or Ireland.

Short title

17. This Act may be cited as "The Canal Boats Act, 1877."

THE LOCAL TAXATION RETURNS ACT, 1877.

(40 & 41 VICT. c. 66.) (*b*)

An Act to amend the Law with respect to the Annual Returns of Local Taxation in England, and for other purposes relating to such taxation.

[14th August 1877.]

Date for annual return of local taxation.

1. The annual return required by law to be made of any receipts or expenditure of a local authority, or of any rates taxes tolls or dues, shall be made for the financial year ending on the twenty-fifth day of March, or on such other day as the Local Government Board may from time to time prescribe, upon the application of any particular authority in respect of their receipts and expenditure, or of any rates taxes tolls or dues levied by them, or in respect of the receipts and expenditure and of the rates taxes tolls or dues levied by any class of authorities (*c*).

Every such return shall be sent to the Local Government Board and not to one of her Majesty's principal Secretaries of State, and shall be so sent within one month after the audit of the receipts and expenditure to which the return relates is completed, or if the audit is not completed within six months after the end of the financial year for which the return is to be made, then on the expiration of such six months, or if there is no audit, then within one month after the end of the said financial year.

For the purpose of any such return the date to which the accounts of any local authority are required by law to be made up, and the date at which such accounts are required by law to be audited, and auditors are required

(*z*) The excepted vessels may in some cases be registered as canal boats. See the Canal Boats Act, 1884, s. 10, *post*, p. 1791.

(*a*) Repealed by the S. L. R. A., 1894.

(*b*) The preamble to this Act was repealed by the S. L. R. A., 1894. See also s. 4 of that Act as to the omission of the clause of enactment. The marginal notes are as printed in the second edition of the Statutes Revised. See also on the subject of this Act, the Local Taxation Returns Act, 1860, *ante*, p. 1481. This Act is repealed by the Municipal Corporations Act, 1882, in so far as it relates to the receipts and expenditure of municipal corporations. As to returns under that Act, see 45 & 46 Vict. c. 50, s. 28.

(*c*) This return is dispensed with where the accounts are audited by a district auditor, and a duplicate of the financial statement is sent to the L. G. B. under the District Auditors Act, 1879, s. 3.

to be elected or appointed, may be altered by the local authority, with the approval of the Local Government Board: Provided, that nothing in this section shall prevent any accounts being made up and audited at shorter periods than twelve months, so that one of such shorter periods ends on the last day of the financial year for which the return of such accounts is to be made.

2. Every return to which this Act applies shall be made by the clerk of the local authority, or where no clerk is appointed or acting, by the treasurer or other officer keeping the accounts of the receipts and expenditure, rates, taxes, tolls, or dues, to which the return relates, and any such clerk treasurer or other officer who makes default in making any such return shall be liable to a penalty not exceeding twenty pounds for each offence, to be recovered by action on behalf of her Majesty in the High Court of Justice (*d*). Obligation of clerk of local authority to send return.

3. The expression "local authority" in this Act means any justices, municipal or other corporation, board, guardians, sanitary authority, vestry, commissioners, inspectors, trustees, or other body of persons required by law to make to one of her Majesty's principal Secretaries of State, or to the Local Government Board, a return of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them or under their direction. Definition of "local authority"

4. . . . (*e*) the Local Government Board shall make such provision as may seem to them necessary for any change of the date of the accounts and audit of the accounts of any local authority which may be rendered necessary by the provisions of this Act, so as to cause as little inconvenience as possible to the local authority. Change of date of accounts and audits.

5. This Act may be cited as "The Local Taxation Returns Act, 1877." Short title.

The Local Taxation Returns Act, 1860, and this Act may be cited as "The Local Taxation Returns Acts, 1860 and 1877."

THE BATHS AND WASHHOUSES ACT, 1878.

(41 & 42 VICT. c. 14.) (*f*)

An Act to amend the Law relating to Public Baths and Washhouses.

[27th May 1878.]

1. This Act may be cited for all purposes as "The Baths and Washhouses Act, 1878." Short title.

The words "covered swimming bath" in this Act shall mean a swimming bath protected by a roof or other covering from the weather. "Covered swimming bath."

2. This Act and the recited Acts, as amended by the Statute Law Revision Act, 1875, and the Public Health Act, 1875, and by this Act, shall be construed and carried into execution as one Act; and the words "the council and the commissioners" when used in this Act shall include the urban authority mentioned in the tenth section of the Public Health Act, 1875 (*g*). Construction of Act. 38 & 39 Vict. c. 66. 38 & 39 Vict. c. 55.

(*d*) See the Local Taxation Returns Act, 1860, s. 4, *ante*, p. 1482.

(*e*) The provision of this section as to the first return was repealed by the S. L. R. A., 1883.

(*f*) See the Baths and Washhouses Acts, 1846, *ante*, p. 1372, and 1847, *ante*, p. 1438; also 1882, *post*, p. 1705, and 1899, *post*, p. 1948. The preamble to this Act was repealed by the S. L. R. A., 1894. See also s. 4 of that Act as to the omission of the clause of enactment.

(*g*) *Ante*, p. 41.

Covered swimming baths authorised.

3. All the provisions of the recited Acts respectively shall be construed to extend and to have extended from the passing of such Acts respectively to covered swimming baths as well as to baths washhouses and open bathing places.

As to charges for swimming baths.

4. The council and the commissioners respectively may from time to time provide covered swimming baths, and make such reasonable charges for the use thereof as they shall think fit, not exceeding the charges mentioned in the Schedule annexed to this Act.

Powers to close swimming baths for a limited period.

5. The council and the commissioners respectively may during such period, not exceeding five months in any one year, as they shall think fit, from the beginning of the month of November to the end of the month of March, close any covered swimming bath or open swimming bath, and may either keep the same closed or may establish therein a gymnasium or such other means of healthful recreation as they shall think fit, or may during such period allow any covered or open swimming bath to be used as an empty building for such purposes of healthful recreation or exercise as they shall think fit during such period as aforesaid, and may at any time allow any portion of the public baths not required by the commissioners to be used for holding vestry meetings or other parochial purposes (*h*).

Powers to make byelaws.

6. The council and the commissioners respectively may make byelaws for the regulation management and use of the open or swimming baths when used for any of the purposes mentioned in the fifth section of this Act; and all the provisions in the principal Act relating to byelaws shall extend and apply to byelaws made under this section (*i*).

Powers to appoint officers.

7. The council and the commissioners respectively may appoint and remove at pleasure such officers and servants as shall be necessary for the management and superintendence of any gymnasium or other means of recreation established under this Act, and may appoint reasonable salaries wages and allowances for such officers and servants.

Power to make charges for gymnasium, etc.

8. The council and the commissioners respectively may from time to time make such reasonable charges for the use of the gymnasium or other means of recreation established under this Act, or for the use of any covered swimming bath as an empty room, as they shall think fit.

Powers of borrowing, etc. extended to this Act.

9. The provisions in the twenty-first, twenty-second, and twenty-third sections of the principal Act (*k*) authorising the borrowing and advancement of money for the purposes of that Act, shall be taken to authorise the borrowing and advancement of money in like manner for the purposes of this Act; and the approval of the Local Government Board shall be substituted for that of the Treasury in all cases where money is borrowed for the purposes of the principal Act or this Act.

Power to remove offenders.

Baths, etc. to be considered public and open places.

10. The council and the commissioners respectively, and their respective servants and agents, may remove any person offending against any of the byelaws made under this Act and the recited Acts, or any of them; and any bath or washhouse, or open bathing place, or covered swimming bath, established under this Act and the recited Acts, or any of them, shall be taken

(*h*) The proviso to this section relating to using the swimming bath when closed for music or dancing is repealed by the Baths and Washhouses Act, 1899, *post*, p. 1948. See now s. 2 of that Act. As to the metropolis, see the Baths and Washhouses Act, 1896, making similar changes. A cinematograph entertainment is a "healthful recreation" (*Att.-Gen.* v. *Shoreditch Corporation* (1914), 30 T. L. R. 382).

(*i*) Model byelaws have been issued by the L. G. B. under this section. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 311.

(*k*) See these sections, *ante*, p. 1376.

to be a public and open place, so as to make offences against decency therein criminal offences.

11. The council and the commissioners respectively, and their respective officers and servants, may refuse admittance to any bath, washhouse, open bathing place, or covered swimming bath, or any of them, to any person (1) who shall have been convicted of wilfully disobeying any of the byelaws in such bath, washhouse, open bathing place, or covered swimming bath; (2) who shall have been convicted of any offence against public decency in any of such baths, washhouses, open bathing places, or covered swimming baths as aforesaid (*l*). Power to refuse admittance to baths, etc. to offenders.

*   *   *   *   *

13. The expense of carrying this Act into execution shall be defrayed, and the income arising from the use in any manner of any covered swimming bath established under the provisions of this Act and the recited Acts, or any of them, shall be applied, in the same manner as that in which the expenses of the principal Act are thereby directed to be defrayed, and the income arising from baths and washhouses and open bathing places is thereby directed to be applied. Expenses of Act and application of income.

14. The charge of one halfpenny, fixed by the Baths and Washhouses Act, 1847, section seven (*m*), and Part Five of the Schedule to that Act, shall be increased to one penny. Increase of charge. 10 & 11 Vict. c. 61.

THE SCHEDULE ABOVE REFERRED TO. [Sect. 4.]

CHARGES FOR COVERED SWIMMING BATHS.

1st Class.—Any sum not exceeding eightpence for each person.
2nd Class.—Any sum not exceeding fourpence for each person.
3rd Class.—Any sum not exceeding twopence for each person.

THE PUBLIC WORKS LOANS ACT, 1878.

(41 & 42 VICT. c. 18). (*n*)

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and by the Commissioners of Public Works in Ireland, and to authorise the former Commissioners to compound and cancel certain Loans and Interest, and to amend the Public Works Loans Act, 1875.
[27th May 1878.]

1. This Act may be cited as "The Public Works Loans Act, 1878." Short title.

PART I.

PUBLIC WORKS LOAN COMMISSIONERS.

2. [*Grant for loans during period ending* 30*th June*, 1879.] (*o*)

3. [*Composition of debt due from the Epping Rural Sanitary Authority.*] (*p*)

(*l*) Section 12 relates only to the metropolis, and applies the Superannuation (Metropolis) Act, 1866.
(*m*) *Ante*, p. 1439.
(*n*) See the Public Works Loans Act, 1875, *ante*, p. 1608. The preamble to this Act and the recital to s. 4 have been repealed by the S. L. R. A., 1894. See also s. 4 of that Act as to the omission of the clause of enactment.
(*o*) This section was repealed by the S. L. R. A., 1883.
(*p*) This section is omitted as not of general interest.

Examination into proper application of loan advanced on rates. 38 & 39 Vict. c. 89, s. 36.

4. . . . Where upon any examination made in pursuance of section thirty-six of the Public Works Loans Act, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the security of a rate, it appears to the Local Government Board that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board may order that sum to be, within the time named in the order, applied either for the said purpose or towards the repayment to the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways and partly in the other, and further, if it appears to them that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct a sum equal to the amount so misapplied to be raised within the time and out of the fund or rate named in the order and to be applied as directed by the above-mentioned order (*q*).

An order made by the Local Government Board in pursuance of this section may be enforced by writ of mandamus.

5. [*Cancellation of debt due in respect of Wigan church.*] (*r*)

Repeal of obligation of Public Works Loan Commissioners to take securities under 38 & 39 Vict. c. 83. 38 & 39 Vict. c. 89.

6. So much of any Act as requires the Public Works Loan Commissioners to take in respect of any loan advanced by them under that Act in preference to any other securities, all or such one or more of the securities issuable under the Local Loans Act, 1875, as they may prefer, is hereby repealed, and the security for any such loan may be given and taken under and pursuant to the Public Works Loans Act, 1875 (*s*).

* * * * *

THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

(41 & 42 VICT. c. 77.) (*t*)

An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads; and for other purposes. [16th August 1878.]

PRELIMINARY.

Short title.

1. This Act may be cited as "The Highways and Locomotives (Amendment) Act, 1878."

Extent.

2. This Act shall not apply to Scotland or Ireland; and, save as is by this Act expressly provided, Part I. of this Act shall not apply . . . (*u*) to any part of the metropolis . . . (*x*).

(*q*) The unapplied balance may now be applied to any purpose to which moneys borrowed on the security of the rate are properly applicable. See the Public Works Loans Act, 1881, s. 9, *post*, p. 1699.

(*r*) Section 5 was repealed by the S. L. R. A., 1883.

(*s*) Part II. related to Ireland only, and was repealed by the S. L. R. A., 1883.

(*t*) The several statutes relating to highways are not included in this Work. This Act, however, contains the provisions as to main roads, which are referred to in the L. G. A., 1888, s. 11, *ante*, p. 736. See also the Locomotives on Highways Act, 1896, and the Locomotives Act, 1898, *post*, p. 1905. The preamble to this Act is repealed by the S. L. R. A., 1894. See also s. 4 of that Act as to the omission of the clause of enactment.

(*u*) Words excluding the Isle of Wight were here repealed by the S. L. R. A., 1898, having been rendered unnecessary by the L. G. A., 1888, s. 12, *ante*, p. 747.

(*x*) The remainder of this section, which excluded highways in South Wales from its operation, was repealed by the S. L. R. A., 1898, having been rendered obsolete by the L. G. A., 1888, s. 13, *ante*, p. 748.

PART I.

AMENDMENT OF HIGHWAY LAW.

Highway Districts (*y*).

* * * * *

Power of county authority to enforce performance of duty by defaulting highway authority.

10. Where complaint is made to the county authority (*z*) that the highway authority of any highway area within their jurisdiction has made default in maintaining or repairing all or any of the highways within their jurisdiction, the county authority (*z*), if satisfied after due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority in the matter of such complaint (*a*).

If such duty is not performed by the time limited in the order, and the highway authority fail to show to the county authority (*z*) sufficient cause why the order has not been complied with, the county authority may appoint some person to perform such duty, and shall by order direct that the expenditure of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed into the High Court of Justice, and be enforced in the same manner as if the same were an order of such court.

Any person appointed under this section to perform the duty of a defaulting highway authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept, and the county authority (*z*) may from time to time, by order, change any person so appointed.

Where an order has been made by a county authority (*z*) for the repair of a highway on a highway authority alleged to be in default, if such authority, within ten days after service on them of the order of the county authority (*z*), give notice to the clerk of the peace that they decline to comply with the requisitions of such order until their liability to repair the highway in respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county authority either to satisfy the defaulting authority by cancelling or modifying in such manner as the authority may desire the order of the county authority, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway (*b*).

If the county authority (*z*) decide to submit the question to a jury they

(*y*) Sections 3—9 inclusive of this Act (with the exception of part of s. 7, as to which see s. 29 (c) of the L. G. A., 1894, *ante*, p. 1012, and notes) have become inoperative by reason of the provisions of s. 25 of the L. G. A., 1894, *ante*, p. 1003, by which the rural district councils are made the highway authorities in their districts. It has not been thought worth while to set out here in full the provisions of s. 7, because the only material part of it is set out in full in the notes to s. 29 (c) of the L. G. A., 1894.

(*z*) The county authority are now the county council. See note (*z*), p. 1687, *post*.

(*a*) This order may be made notwithstanding a bonâ fide dispute as to whether the road in question is a highway at all (*R.* v. *Cheshire JJ.* (1884), 48 J. P. 262; 50 L. T. 483). But the county authority are not bound to make the order if they are satisfied that the road is not a highway (*Ex parte Johnson* (1886), 50 J. P. 313). The procedure to compel the county council to make an order is by rule *nisi* for a *mandamus* (*R.* v. *Dorset C. C.* (1902), 67 J. P. 19).

(*b*) If the county authority do not cancel or modify their order they are bound to order an indictment, though the fact that the road is a highway as well as the liability to repair is in dispute. See *R.* v. *Cheshire JJ.* (1884), 48 J. P. 262; 50 L. T. 483; and *R.* v. *Bedfordshire C. C.*, Times, February 4th, 1895, where a rule for *mandamus* to the county authority to prefer an indictment was made absolute without opposition in a case where the county authority refused to cancel or modify their order after notice from the highway authority that they declined to comply with such order until their liability had been determined by a jury, whereupon the county council had resolved not to direct an indictment to be preferred.

shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair the highway (*c*). Until the trial of the indictment is concluded the order of the county authority (*d*) shall be suspended. On the conclusion of the trial, if the jury find the defendants guilty, the order of the county authority (*d*) shall forthwith be deemed to come into force; but if the jury acquit the defendants the order of the county authority (*d*) shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the court before whom the case is tried may direct. Any costs directed to be paid by the county authority (*d*) shall be deemed to be expenses properly incurred by such authority, and shall be paid accordingly out of the county rate; and any costs directed to be paid by the highway authority shall be deemed to be expenses properly incurred by such authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds applicable to the maintenance of such roads.

11. [*Duration of office of waywarden.*] (*e*)

12. [*Repeal of part of* 25 & 26 *Vict. c.* 71, *s.* 7.]

MAIN ROADS (*f*).

Disturnpiked roads to become main roads.

13. For the purposes of this Act, and subject to its provisions, any road which has, within the period between the thirty-first day of December one thousand eight hundred and seventy (*g*) and the date of the passing of this Act, ceased to be a turnpike road (*h*), and any road which, being at the time

(*c*) Although a highway authority cannot be indicted at common law for non-repair of a highway (*R.* v. *Poole Corporation* (1887), 19 Q. B. D. 602; 52 J. P. 84), yet they may be indicted if proceedings are taken under this section (*R.* v. *Wakefield Corporation* (1888), 20 Q. B. D. 810; 52 J. P. 422). As to the form of the indictment, see *R.* v. *Biggleswade R. D. C.* (1900), 64 J. P. 422; *R.* v. *Southport Corporation* (1901), 65 J. P. 184. See also *R.* v. *Crompton U. D. C.* (1902), 66 J. P. 566; 86 L. T. 762.

(*d*) The county authority are now the county council. See note (*z*), p. 1687, *post.*

(*e*) Section 11 has become inoperative by the passing of s. 25 of the L. G. A., 1894, *ante*, p. 1003, and s. 12 is repealed by the S. L. R. A., 1883.

(*f*) See the provisions of the L. G. A., 1888, s. 11, *ante*, p. 736, as to main roads.

(*g*) A provision in the Turnpike Acts coming into operation before December 31st, 1870, that turnpike trustees should not spend money or levy toll upon certain portions of turnpike roads did not prevent such portions of the roads from being still turnpike roads on December 31st, 1870, within the meaning of s. 13 of the Highways and Locomotives (Amendment) Act, 1878. So held as to an agreement under the L. G. A., 1858, s. 41, made on December 31st, 1870, between turnpike trustees and a corporation, under which the turnpikes upon certain portions of turnpike roads were removed, and the repair of such portions was undertaken by the corporation (*West Riding JJ.* v. *R.* (1884), 8 App. Cas. 781; 48 J. P. 228).

(*h*) The corporation of the borough of Rochdale was the highway authority of the Rochdale highway area. Under ss. 47—50 of the Towns Improvement Clauses Act, 1847, the obligation to repair all public highways within a "town" was imposed upon the corporation, and the trustees of certain turnpike roads were forbidden to collect any toll or lay out any money on any road within that area. By a local Act of 1872 the boundaries of the borough were enlarged, and all the provisions of the Acts relating to the "town" were made applicable to the enlarged area of the borough. The effect was that further portions of turnpike roads were for the first time brought within the area of the borough, and within the operation of the Towns Improvement Clauses Act, 1847:—*Held*, reversing the decision of the Court of Appeal, that these further portions being only parts of turnpike roads, had not "ceased to be turnpike roads" and were not to be deemed to be "main roads" within the above section (*Lancashir JJ.* v. *Rochdale Corporation* (1884), 8 App. Cas. 494; 48 J. P. 20). In 1855 a portion o a turnpike road was included in an improvement district under a local Act incorporating the Towns Improvement Clauses Act, 1847. Thereupon, by virtue of ss. 47—51 of the latter Act the maintenance of this

of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road. . . . (*i*).

Description of highway areas.

14. The following areas shall be deemed to be highway areas for the purposes of this Act; (that is to say,)

(1) Urban sanitary districts (*k*):

(2) Highway districts:

(3) Highway parishes not included within any highway district or any urban sanitary district (*l*).

Power to declare ordinary highway to be a main road.

15. Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority (*m*) for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority (*m*), if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a main road, shall make an order accordingly.

A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority (*m*) made within a period of not more than six months after the making of the first-mentioned order.

Power to reduce main road to status of ordinary highway.

16. (*n*) . . . where it appears to a county authority (*m*) that any road within their county which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a *Provisional*

portion of the road became vested in the improvement commissioners, and the turnpike trustees ceased to have power to collect toll or lay out money upon it. In 1877 the turnpike trust expired. The commissioners were the highway authority for the district, and the district was a highway area within the meaning of the above section:—*Held*, that notwithstanding the operation of ss. 47—51 of the Towns Improvement Clauses Act, 1847, the road only ceased to be a turnpike road and became a main road within the above section upon the expiration of the turnpike trust (*Lancashire JJ.* v. *Newton-in-Makerfield Improvement Commissioners* (1887), 11 App. Cas. 416).

(*i*) The remainder of this section is repealed by the S. L. R. A., 1894, having been rendered obsolete by s. 11 of the L. G. A., 1888, *ante*, p. 736.

(*k*) The expression as defined by s. 38, *post*, p. 1687, did not include quarter sessions boroughs. But these boroughs are now included by virtue of the L. G. A., 1888, s. 35 (4), *ante*, p. 761, and s. 38 (3), *ante*, p. 763.

(*l*) Where the quarter sessions had for many years paid half the expenses of maintaining a road under the belief that it was a main road for which they were liable, and it was afterwards discovered that they were not liable by reason of the road being within a borough, it was held that an action would not lie in the name of the justices to recover the sums so paid to the highway authority (*Kent JJ.* v. *Sandgate L. B.* (1892), 7 T. L. R. 571).

(*m*) The county council are now the county authority. See note (*z*), p. 1687, *post*. In the case of a proposal to declare *all* the roads in a county to be main roads, the L. G. B. pointed out that the county authority are only empowered by the Act to make an order declaring a road to be a main road on the application of the highway authority under the circumstances specified in s. 15. In considering such application the county authority must have regard to the circumstances of each particular road to which the application relates. It appeared to the Board that it was doubful whether an order dealing with all the roads in a county would be in accordance with the purpose of the Act.

(*n*) Parts of this section were repealed by the S. L. R. A., 1894, and are here omitted. The remainder of the section is amended by s. 4 of the Highways and Bridges Act, 1891, *post*, p. 1862, whereby it is provided that s. 16 of the Highways and Locomotives (Amendment) Act, 1878, shall apply to any part of a main road in any county, and so much of that section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, shall be repealed, but no such order shall be made in respect of any main road within a municipal borough without the assent of the council of the said borough having been first obtained.

Order declaring that such road has ceased to be a main road and become an ordinary highway (*o*).

The Local Government Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it . . . ought to cease to be a main road and become an ordinary highway shall make a *Provisional* Order accordingly *to be confirmed as hereinafter mentioned.*

All expenses incurred in or incidental to the making *or confirmation* of any Order under this section shall be defrayed by the county authority (*p*) applying for such Order.

17. [*Turnpike road in several counties.*] (*q*)

Accounts of expenses of maintenance of main roads.

18. Every highway authority shall keep, in such form as may be directed by the county authority (*r*), a separate account of the expenses of the maintenance of the main roads within their jurisdiction, and shall forward copies thereof to the county authority (*r*) at such time or times in every year as may be required by the county authority (*r*), and the accounts so kept shall, where the accounts of the highway authority are audited under this Act or under section two hundred and forty-seven of the Public Health Act, 1875, be audited in the same manner as the other accounts of such authority, and where the accounts of the highway authority are not so audited shall be subject to such audit as the county authority (*r*) may direct.

38 & 39 Vict. c. 55.

If any highway authority makes default in complying with the provisions of this section, or with any directions given in pursuance thereof by the county authority (*r*), the county authority may withhold all or any part of the contribution payable by them under this Act towards the expenses of

(*o*) A road which ceased to be a turnpike within the period specified by the first paragraph of this section, and had become a main road, as no application for a Provisional Order was made before February 1st, 1879, is not excluded from the operation of this paragraph, and the L. G. B. has, therefore, jurisdiction to make an Order declaring such road an ordinary highway upon an application made subsequently to February 1st, 1879 (*R.* v. *L. G. B.* (1885), 15 Q. B. D. 70; 49 J. P. 580).

The L. G. B. require an application from a county council under this section to be supported by a copy of the resolution directing it, a statement of the grounds upon which it is made, and an ordnance map showing by colour the road to which the application relates.

If the road proposed to be dismained is a disturnpiked road, the Board should be informed of the name of the turnpike trust in which it was comprised, and should be furnished with a reference to the local Act and with the precise description of the road in that Act. If, however, the road was constituted a main road by the county authority, a copy of the provisional and final orders declaring such main road should be forwarded.

The Board's practice is to direct a local inquiry to be held after public notice in addition to the inspection required by the section.

In response to a proposal of a county council that an order should be issued dismaining *all* the roads in a county, the Board stated that they were not prepared to entertain an application of such comprehensive scope. The Board pointed out that the section required that before taking action to reduce a main road to the status of an ordinary highway they must be satisfied that the road ought to cease to be a main road, and that they were of opinion that it was intended that in coming to a decision in such a case they should have regard to the special circumstances of the particular road proposed to be dismained. For the Board to decide that all the roads in a county should be dismained on the sole ground that the county council considered the system introduced by the L. G. A., 1888, as regards the maintenance, etc. of main roads to be open to objection, would, in their opinion, be in direct opposition to the evident intention of the Acts bearing on the question, even if it could be shown that all the highway authorities concerned concurred in the scheme.

(*p*) See note (*z*), *post*, p. 1687.

(*q*) Section 17 is now repealed by the S. L. R. A., 1898, as obsolete since the extinction of all turnpike trusts.

(*r*) The county authority are now the county council. See note (*z*), p. 1687, *post*.

the maintenance of main roads by such highway authority for the year in which such default occurs.

19. Where a highway district is situate in more than one county, the provisions of this Act, with respect to the expenses of the maintenance of main roads, shall apply as if the portion of such district situate in each county were a separate highway district in that county. Highway district situate in more than one county.

20. Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority (*s*) from time to time, by order, to declare any main road or part of a main road within their district to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged (*t*). Repair of main roads in certain cases.

Bridges.

21. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the Bridges Act, 1803, and which is certified by the county surveyor or other person appointed in that behalf by the county authority (*s*) to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair (*u*). Certain existing bridges may be accepted by county authority. 43 Geo. 3, c. 59.

22. The county authority (*s*) may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected (*x*), after the same has been certified in accordance with the provisions of section five of the Bridges Act, 1803, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one-half the cost of erecting such bridge. Contribution out of county rates towards erecting bridges. 43 Geo. 3, c. 59.

Extraordinary Traffic (*y*).

23. Where by a certificate of their surveyor (*z*) it appears to the authority which is liable or has undertaken to repair any highway (*a*), whether a main Power of road authority to recover expenses of extraordinary traffic

(*s*) The county authority are now the county council. See note (*z*), *post*, p. 1687.

(*t*) The meaning of this section has already been explained in the note to the L. G. A., 1888, s. 11 (13), *ante*, p. 746.

(*u*) By s. 6 of the L. G. A., 1888, the county council shall have power to purchase, or take over on terms to be agreed upon, existing bridges not being at present county bridges, and to erect new bridges, and to maintain, repair, and improve any bridges so purchased, taken over, or erected. See also the Highways and Bridges Act, 1891, and s. 6 of the Crown Lands Act, 1906, enabling the Commissioner of Works to convey bridges to local authorities.

(*x*) The county authority may for this purpose borrow on mortgage of the county rate under 4 & 5 Vict. c. 49. See the County Bridges Loans Extension Act, 1880.

(*y*) This section refers to traffic or weight which is extraordinary or excessive, having regard to the ordinary user of the road, *e.g.*, to the use of the road by traction engines (*Lord Aveland* v. *Lucas* (1880), 5 C. P. D. 211, 351; 43 J. P. 830; *Savin* v. *Oswestry Highway Board* (1881), 44 J. P. 766). See *Tonbridge Highway Board* v. *Sevenoaks Highway Board* (1885), 49 J. P. 340; 33 W. R. 306, where the use of traction engines and heavy

(*z*) (*a*) For notes (*z*) (*a*) see p. 1679.

road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses (*z*) have been incurred by

waggons upon an agricultural road for drawing stone from a new quarry was held to be within the section.

The question whether traffic is extraordinary or not is one of fact. Thus traffic arising out of a recognised industry in a district was held not to be within this section (*Wallington* v. *Hoskins* (1882), 6 Q. B. D. 206; 45 J. P. 173; *Lower Strafforth Highway Board* v. *Hatfield Chase Co.* (1893), 57 J. P. 567); though it was greater than the other traffic on the road, and was not continuous (*Raglan Highway Board* v. *Monmouth Steam Co.* (1883), 46 J. P. 598); but if it were proved that the traffic complained of was a recognised industry in the district and was carried on in the manner usual in the trade of that district it is still open to the court to find that the traffic in question is extraordinary as regards any particular road in the district (*Geirionydd R. D. C.* v. *Green*, [1909] 2 K. B. 845; 73 J. P. 137). Traffic is not extraordinary merely because the defendant sends over the road many more carts than any one else (*R.* v. *Williamson* (1882), 45 J. P. 505; *Ledbury R. D. C.* v. *Somerset* (*Lady*), [1914] W. N. 222). The carting of materials for building along a road used generally for agricultural traffic was held not to be extraordinary in *Pickering Highway Board* v. *Barry* (1883), 8 Q. B. D. 59; 46 J. P. 215, but that case was disapproved in *Hill* v. *Thomas*, *infra*. The expenses and traffic referred to in this section mean expenses and traffic which are extraordinary with reference to the particular road in question. The appellant was summoned by a highway board to recover expenses incurred by the board in consequence of stone having been carted by the appellant from a quarry along a road, which was an ordinary country road used for light country traffic and had never been adapted for or made to bear heavier traffic. Stone traffic was a recognised business in the neighbourhood, but was not the ordinary or recognised traffic of the road in question:—*Held*, that under these circumstances the expenses and traffic were extraordinary within the meaning of this section (*Whitebread* v. *Sevenoaks Highway Board*, [1892] 1 Q. B. 8; 56 J. P. 214). Extraordinary traffic within the meaning of this section is not confined to the carriage of unusual materials, nor to carriage for unusual purposes, but it includes all traffic which is so exceptional as regards the ordinary user of the road in respect of quality, quantity, or frequency, as substantially to increase the burden imposed on the road by ordinary traffic, and cause damage and expense thereby beyond what is common. The object of the section is not to prohibit extraordinary traffic, but to throw the expense of causing the damage done thereby on those who cause it (*Hill* v. *Thomas*, [1893] 2 Q. B. 233; 57 J. P. 628). In determining what is extraordinary traffic the court should not take into account the ordinary traffic of the district, but only that of the particular road in question (*Etherley Grange Coal Co.* v. *Auckland District Highway Board*, [1894] 1 Q. B. 37; 58 J. P. 102). In deciding whether the *expenses* incurred were extraordinary regard must be had to the average expense of repairing similar highways in the neighbourhood (*Billericay R. D. C.* v. *Poplar Union Guardians*, [1911] 2 K. B. 801; 75 J. P. 497). In estimating the extraordinary expenses to which a highway authority is put by extraordinary traffic with a view to ascertaining the liability of the person responsible for leading that traffic the following deductions should be made: (1) a deduction for the ordinary expenses of repair, ascertained by taking the average cost of repairing that and comparable roads in the district; (2) a deduction for betterment, being the value of the extent to which the structure or general condition of the road is improved as a result of the repairs rendered necessary by the extraordinary traffic. The fact that the road was "granited" or widened or provided with a thicker crust may be taken into account in this connection—*per* CHANNELL, J., in *Colchester Corporation* v. *Gepp* (1912), 76 J. P. 337; 10 L. G. R. 930. Where a claim is made for extraordinary expenses under this section, the facts (i.) that the road in question was initially weak in some places, (ii.) that some part of the traffic may be fairly looked upon as ordinary, (iii.) that in consequence of the repairs carried out in order to make good the damage the road is a better road than it would have been had there been no extraordinary traffic and no consequent repairs, may all be taken into account to reduce the amount payable to the highway authority (*Cambridgeshire C. C.* v. *Pepper and Hollis* (1912), 76 J. P. 393; 10 L. G. R. 759). In deciding whether extraordinary traffic has been led it is not material to consider (a) the motive of the persons who lead extraordinary traffic; (b) whether there is or is not an alternative route; (c) whether a way or road theretofore used has been rendered impossible to use by the action of the highway authority. The court has simply to look at the phenomena as they occur on the road in question, to see what the road is, and to decide whether the traffic brought to it is extraordinary (*Worsborough U. D. C.* v. *Barnsley British Co-operative Society, Ltd.*, Times, May 22nd, 1914; 137 L. T. Jo. 110). See also *Norfolk C. C.* v. *Green* (1904), 68 J. P. 223; 90 L. T. 451, and the county court cases of *Wycombe R. D. C.* v. *Smith* (1903), 67 J. P. 75; *High Wycombe R. D. C.* v. *Palmer* (1905), 69 J. P. 167.

(*z*) For note (*z*) see p. 1679.

such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover *in a summary manner* (*b*) from any person by

Where it is pleaded that the sum claimed is arrived at by deduction from the extraordinary expenses of the average expense of similar highways in the neighbourhood, the plaintiffs must, if required, deliver particulars of the names of such highways and the average expense of repairing each of them (*Colchester Corporation* v. *Gepp*, [1912] 1 K. B. 477; 76 J. P. 97). And see *Morpeth R. D. C.* v. *Bullock's Hall Colliery Co., Ltd.*, [1913] 2 K. B. 7; 77 J. P. 188.

In *Hemsworth R. D. C.* v. *Micklethwaite* (1904), 68 J. P. 345; 2 L. G. R. 1084, it was held that although the fact that a local authority had been in default in failing to keep a road in proper repair affords no complete answer to a claim by them to recover under this section, it is an essential element for consideration in estimating the amount of damage caused by the extraordinary traffic. Everything which bears upon the question of whether there has been excessive weight upon a road has to be taken into consideration, not only the amount of pressure per square inch of the wheels of the particular vehicles, but also the concentration of that weight upon a comparatively small space.

A road in a district in which for many years stone had been quarried and hauled was damaged by the haulage thereon by the defendants of stone in trucks drawn by a traction engine. Haulage by traction engines had been carried on over other roads, but this mode of haulage, although it had been adopted for a period by the defendants, was not the accustomed mode over the road in question, haulage having previously been done in carts or waggons drawn by horses. It was held that the traffic was extraordinary (*Shepton Mallet R. D. C.* v. *Wainwright & Co.* (1908), 72 J. P. 459; 24 T. L. R. 894). See also *Ledbury R. D. C.* v. *Somerset* (*Lady*), *ante*, p. 1678.

By the Locomotives Act, 1898, s. 1 (3), any damage arising from the user of any waggon carrying only one block, plate, cable, roll, vessel of stone or metal, or other single article, being of greater weight than sixteen tons, such waggon not having the fellies, tires, or shoes less than eight inches in breadth, shall be deemed to be damage caused by excessive weight within the meaning of this section.

(*z*) J. was not appointed under seal to be district surveyor, but only by minute of the board signed by their chairman, but not countersigned by the clerk of the board. L. being summoned for damage under this section, set up the defence that the appointment of J. and his certificate and the proceedings were void:—*Held*, that as J. had acted *de facto* as surveyor the objection could not be sustained (*Lancaster* v. *Harlech Highway Board* (1888), 52 J. P. 805). The certificate may include other roads besides the road which is the subject of the particular proceedings (*Wirrall Highway Board* v. *Newell*, [1895] 1 Q. B. 827; 59 J. P. 183). As to the form of the certificate, and the principles to be considered in arriving at "extraordinary expenses," see *Ledbury R. D. C* v *Colwall Park Quarries Co., Ltd.* (1913), 77 J. P. 198; 108 L. T. 1002; *Perth C. C.* v. *Rattray*, [1913] S. C. 794; *Billericay R. D. C.* v. *Poplar Union Guardians*, *ante*, p. 1678.

(*a*) The use of a traction engine which by reason of its excessive weight does substantial and abnormal damage to a public road adequate for ordinary traffic, is a public nuisance, even though the engine be constructed in compliance with the provisions of the Locomotive Acts, 1861 and 1865. In such a case the duty cast upon a county council to repair such damage, and the liability of a district council to provide the funds for such repair, amount to special damage, so as to make the owner of the engine civilly liable at the suit of either body or of both bodies suing jointly, for the cost of repairing the road (*Cavan C. C. and Bailieborough R. D. C.* v. *Kane*, [1913] 2 I. R. 250).

(*b*) By the Locomotives Act, 1898, s. 12, *post*, p. 1912, expenses are now not recoverable in a summary manner, but may be recovered if not exceeding £250 in the county court, and if exceeding that sum in the High Court, and s. 17 (2) of that Act has not the effect of preserving the jurisdiction of justices in extraordinary traffic cases where a "light locomotive" is concerned (*R.* v. *Bath County Court Judge*, [1908] 1 K. B. 958; 72 J. P. 67). But in a proper case, although the action be brought to recover less than £250, it may be removed from the county court into the High Court by *certiorari* under s. 126 of the County Courts Act, 1888. See *Godmanchester U. D. C.* v. *Hooley*, Times, August 5th, 1901, where an application for removal was refused.

Where the amount certified by the surveyor exceeded £250, and an action was brought in the High Court in which the verdict of the jury was for £60 only, and judgment was entered for that amount with costs on the High Court scale, it was held that the High Court had jurisdiction, and that the taxation was rightly made on the High Court scale (*Chesterfield R. D. C.* v. *Newton*, [1904] 1 K. B. 62; 68 J. P. 33).

As to inspection of books in such actions, see *Bromley R. D. C.* v. *Chittenden* (1906), 70 J. P. 409; 4 L. G. R. 967; *Colchester Corporation* v. *Gepp*, [1912] 1 K. B. 477; 76 J. P. 97.

In any case no action can be brought until the expenses alleged to be extraordinary have been actually incurred (*Little Hulton U. D. C.* v. *Jackson* (1904), 68 J. P. 451; 2 L. G. R. 986).

whose order (*c*) such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having

In an action to recover expenses in respect of extraordinary traffic the court will not order the plaintiffs to give the defendants particulars of the average expense of repairing the road in question. The court will only order particulars of the average expense of repairing similar roads in the neighbourhood (*Morpeth R. D. C.* v. *Bullock's Hall Colliery Co.*, [1913] 2 K. B. 7; 77 J. P. 188).

Further, by the Locomotives Act, 1898, s. 12, such proceedings must be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract or work extending over a long period, they must be commenced not later than six months after the completion of the contract or work.

This last enactment gets rid of the decision in *Whitebread* v. *Sevenoaks Highway Board*, *ante*, p. 1678, that there was no limit to the expenditure recoverable under the principal Act. See *Epsom U. D. C.* v. *London C. C.*, [1900] 2 Q. B. 751; 64 J. P. 726. It does not, however, seem to affect the decision in *Story* v. *Sheard*, [1892] 2 Q. B. 515; 56 J. P. 760, that proceedings cannot be taken against the executors of the person by whose order the traffic was conducted.

In *Norfolk C. C.* v. *Green* (1902), 68 J. P. 223; 90 L. T. 451, about 1,500 tons of timber, the produce of the country, was felled and hauled under several separate contracts extending over two years. WALTON, J., held that this was not a particular work extending over a long period within the meaning of this last-mentioned enactment. A municipal corporation, requiring road material for the general purpose of the maintenance and construction of roads within their district, entered into contracts with two contractors, whereby the contractors agreed to supply and deliver to the corporation during the twelve months from March 31st, 1904, to March 31st, 1905, flints and ragstone in such quantities and numbers, at such times and in such manner as the corporation should from time to time by order in writing direct. The plaintiffs, as the authority liable for the repair of highways in their district, incurred extraordinary expenses in repairing a highway in consequence of damage done to it by extraordinary traffic conducted over it in the haulage of stones by the contractors for the fulfilment of their contract with the corporation. The last load of stones was carried on March 31st, 1905, and on August 22nd, 1905, the plaintiffs commenced an action against the corporation for the recovery of the extraordinary expenses:—*Held*, by the Court of Appeal that the damage was not the consequence of "any particular building contract or work extending over a long period" within the meaning of this enactment, and that, therefore, the plaintiffs could recover only the expenses incurred within twelve months before the commencement of the action (*Bromley R. D. C.* v. *Croydon Corporation*, [1908] 1 K. B. 353; 72 J. P. 17).

The "completion of the contract" within the meaning of the Locomotive Acts, 1861 and 1865, means the completion of the contract so far as it relates to the work causing the damage which gives rise to the action, and does not mean its completion in regard to a subsequent period of maintenance by the contractor after completion of the work (*Lancaster R. D. C.* v. *Fisher and Le Fanu*, [1907] 2 K. B. 516; 71 J. P. 401). In another case it was held that the term "building contract" means a contract for the building of any physical construction, and the term "completion of the contract" means completion so far as concerns the constructional work comprised therein; and, where the constructional work consists of several component parts so closely connected that each would be useless without the others, the period of six months begins to run from the completion of the whole work, notwithstanding that the damage to the roads may have been caused exclusively by the haulage of materials in connection with some or one only of the component parts of the work. *Sed quære* whether different considerations may not apply to contracts comprising several independent works, and to contracts comprising work in several different districts where it is shown that all the work within the district of the plaintiff authority has been completed more than six months before the commencement of the action. Thus where the work comprised in a contract included the construction of a reservoir and the laying of a line of pipes therefrom within the plaintiffs' district, and the damage was caused to the roads of the district by haulage in connection with the laying of the pipes but not in connection with the construction of the reservoir, the Court of Appeal held that the contract was a building contract for one compound work extending over a long period within the meaning of the subsection, and that the action for the recovery of the expenses commenced more than six months after the completion of the line of pipes but before the completion of the reservoir was in time (*Carlisle R. D. C.* v. *Carlisle Corporation*, [1909] 1 K. B. 471; 73 J. P. 121). And where a contract provided for the construction of a watertight reservoir, and the reservoir was so far completed that the water was let into it more than six months before the commencement of the action, but was not made water-

(*c*) For note (*c*) see p. 1681.

cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid:

Provided, that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is

tight until within the six months, it was held that the county court judge was justified in finding that the reservoir was not completed within the meaning of the subsection until it was made watertight, and that the action was in time (*Reigate R. D. C.* v. *Sutton District Water Co.* (1909), 78 L. J. K. B. 315; 73 J. P. 161).

The six months' limitation under the Public Authorities Protection Act, 1893, *ante*, p. 963, applies to an action brought against a public authority under this section where the damage has been done by their servants, but not where the damage has been done by contractors under a contract with the public authority to deliver stone for an improvement scheme in course of execution by the authority (*Kent C. C.* v. *Folkestone Corporation*, [1905] 1 K. B. 620; 69 J. P. 125).

(*c*) By the Locomotives Act, 1898, s. 12 (1) (c), *post*, p. 1913, the words "by or in consequence of whose order" are substituted for "by whose order." As the section now stands there is no reason why two or three persons should not be held liable in respect of the damage done to a particular road. The words "by whose order" bring in the contractor, and the words "in consequence of whose order" bring in the building owner—*per* Scrutton, J., in *Windlesham U. D. C.* v. *Seward* (1913), 77 J. P. 161. In some of the earlier cases under the original enactment, it was held that either the owner or his contractor may be proceeded against (*Williams* v. *Davies* (1880), 44 J. P. 347; *Northumberland Whinstone Co.* v. *Alnwick Highway Board* (1880), 44 J. P. 360); and see *Barnet* v. *Hoo Highway Board* (1882), 46 J. P. 805, where it was also held that this section applied, though the railway company for whom the work was done might also be liable under the Railways Clauses Act, 1845, s. 58. A person who let traction engines to move manure for a farmer was held to be liable, in *R.* v. *Ellis* (1882), 8 Q. B. D. 466; 46 J. P. 295. But in *Lapthorn* v. *Harvey* (1885), 49 J. P. 709, where a contractor employed a sub-contractor to cart stone, and the latter used traction engines which caused injury to the highway, it was held that the sub-contractor alone was liable, as he was under no obligation to cart the stone in any particular manner. And see to the same effect the judgment of Lord Bramwell in *Hobbs* v. *Tunbridge Wells L. B.* (1885), 49 J. P. 679. In *Kent C. C.* v. *Vidler*, [1895] 1 Q. B. 448; 59 J. P. 548, the appellants were under obligation to supply a large quantity of ballast for the construction of a new line of railway, and in order to fulfil this obligation they contracted with three proprietors of traction engines for the carriage of the ballast along a highway, and it was held that the appellants were the persons by whose orders the extraordinary traffic caused by the use of these engines had been conducted. In *Colchester, Wemyss & Co.* v. *Gloucestershire C. C.* (1897), 66 L. J. Q. B. 290, where contractors had the direction and regulation of traffic upon a highway which they carried out by using traction engines, regulating the number of waggons attached to each engine, and the weight of each waggon, and giving orders as to the time the vehicles should start, they were held to be persons by whose order such traffic was conducted, notwithstanding that their employers indicated the times during which they would be ready to receive the goods which the contractors had undertaken to deliver. And where a landed proprietor contracted with several persons for the delivery to him of building materials required for improvements at his residence at prices including carriage, the property in the materials to pass on delivery and acceptance at the residence, it was held that he was not liable, although he knew that the contractors intended to send the materials by the particular highway which was damaged by means of traction engines and trucks, because he did not employ or pay the carriers, or give directions as to the route or mode of conveyance (*Kent C. C.* v. *Lord Gerard*, [1897] A. C. 633; 61 J. P. 804). So, also, where contractors for the erection of a county lunatic asylum made a sub-contract for haulage of goods, plant, and materials to the works, to be delivered as required, either by carts or trucks drawn by traction engines, but no special route was prescribed, it was held that they were not liable (*Pethick Brothers* v. *Dorset C. C.* (1898), 62 J. P. 579). By the order of two companies subsidiary to the defendant company, extraordinary traffic had been conducted over a road in respect of which the plaintiffs were the highway authority. It was held upon the facts and the construction of certain agreements between the companies that the orders given by the subsidiary companies were given by them as agents for the defendant company and therefore that the defendant company was liable in respect of the extraordinary expenses incurred by the plaintiffs (*Kent C. C.* v. *Kent Coal Concessions, Ltd.* (1909), 73 J. P. 305; 25 T. L. R. 479).

The effect of the amendment introduced by the Locomotives Act, 1898, s. 12 (1) (c), *post*, p. 1913, appears to be that under it defendants in the position of the defendants in *Lapthorn* v. *Harvey*, *Colchester, Wemyss & Co.* v. *Gloucestershire C. C.*, *Kent C. C.* v. *Lord Gerard*, and *Pethick Brothers* v. *Dorset C. C.*, would now be held liable. See *Epsom U. D. C.* v. *London C. C.*, [1900] 2 Q. B. 751; 64 J. P. 726.

The defendant being about to build a house entered into a contract with a brick company

mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

Discontinuance of unnecessary Highways,

Unnecessary highways may be declared not repairable at the public expense.

24. If any authority lia le to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (in this section referred to " as the applicant authority ") may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

On the day and at the place appointed, the court shall hear any person objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such

to supply him with a quantity of bricks, to be delivered at the place where he proposed to build. He gave no instructions as to the manner, time, or amount in which the bricks were to be delivered, and the company, without his knowledge, delivered them by means of a traction engine and trucks, the excessive weight of which damaged the roads :—*Held*, that the defendant was not the person by or in consequence of whose order such weight had been conducted (*Egham R. D. C.* v. *Gordon*, [1902] 2 K. B. 120; 66 J. P. 759). The visiting committee of a county lunatic asylum, acting by the defendant, their clerk, entered into a contract with a third party under which the third party agreed to erect a lunatic asylum and to indemnify the visiting committee against liability in respect of damage done by extraordinary traffic. The building operations necessitated the conveyance of large quantities of material over certain roads in the plaintiffs' borough, in consequence of which extraordinary traffic was caused and extraordinary expense incurred by the plaintiffs. In an action brought against the clerk to the committee to recover the extraordinary expenses the contractor was made a third party. It was held, following *Egham R. D. C.* v. *Gordon, supra*, that the visiting committee were persons in " consequence of whose order " the traffic was led (*Colchester Corporation* v. *Gepp* (1912), 76 J. P. 337; 10 L. G. R. 930). On appeal the case was settled; see 77 J. P. 181. S., a building owner, contracted with L. to deliver bricks by traction haulage. L. sub-contracted with E. to carry them in this way. L. knew the size and weight of the engines to be employed, but he did not determine the particular road over which they would go. It was held that L. was a person " by or in consequence of whose order " the traffic was conducted (*Windlesham U. D. C.* v. *Seward* (1913), 77 J. P. 161).

By a contract made between the defendants and a third party, the latter agreed to make a reservoir in four calendar months, the contract being silent as to the method or route of haulage for any material that might be required. From May 4th to December 30th, 1905, the contractor employed traction engines with trucks to haul materials from the railway station to the site of the reservoir, a distance of about one and a quarter miles. In an action against the defendants for the recovery of the extraordinary expenses incurred in repairing the highways alleged to have been damaged by this extraordinary traffic, a witness for the defendants stated that if, during the period in question, the same weight of material had been carried by carts no damage would have been caused to the roads; and the defendants' engineer, who was also called by the plaintiffs, said that he thought the contractor would have laid a light railway across the fields for the purpose of the haulage of materials :—*Held*, that there was evidence of the traffic having been conducted in the way it was in consequence of the defendants' order (*Reigate R. D. C.* v. *Sutton District Water Co* (1907), 71 J. P. 405; 5 L. G. R. 917); and in *Bromley R. D. C.* v. *Croydon Corporation, ante*, p. 1680, it was held that under the circumstances of that case set out in the note the traffic was conducted in consequence of the orders of the corporation.

highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate.

Public notice of the time and place appointed for hearing a case under this section shall be given by the applicant authority as follows; (that is to say,)

(1) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the highway to which it refers, in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing; and

(2) By causing a copy of such notice to be affixed, at least fourteen days before the hearing, to the principal doors of every church and chapel in the parish in which such highway is situate, or in some conspicuous position near such highway.

And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an order has been made by a court of summary jurisdiction under this section, upon application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, it appears to the court of quarter sessions that from any change of circumstances since the time of the making of any such order as aforesaid such highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions (*d*).

Appointment of Surveyors in certain Parishes.

25. [*Removal of doubt as to appointment of surveyors in certain parishes.*] (*e*)

Byelaws by County Authority (*f*).

Power of county authority to make byelaws.

26. A county authority (*f*) may from time to time make, with respect to all or any main roads or other highways within any highway area in their county, and when made alter or repeal, byelaws for all or any of the purposes following; (that is to say,)

(1) For prohibiting or regulating the use of any waggon wain cart or carriage drawn by animal power and having wheels of which the fellies or tires are not of such width in proportion to the weight

(*d*) This appeal will still be open to quarter sessions, for the L. G. A., 1888, s. 3 (viii), only transferred to the county council the powers of quarter sessions as the county authority. See also s. 78 (2) of that Act.

(*e*) This section has become inoperative by reason of s. 25 of the L. G. A., 1894, *ante*, p. 1003, by which the rural district councils are made the highway authorities in their districts.

(*f*) The county council are now the county authority. A series of model byelaws under this section has been issued by the L. G. B.

carried by, or to the size of, or to the number of wheels of such waggon wain cart or carriage as may be specified in such byelaws; and

(2) For prohibiting or regulating the use of any waggon wain cart or other carriage drawn by animal power not having the nails on its wheels counter-sunk in such manner as may be specified in such byelaws, or having on its wheels bars or other projections forbidden by such byelaws; and

(3) For prohibiting or regulating the locking of the wheel of any waggon wain cart or carriage drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan slipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and

(4) For prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways; and

(5) [*For regulating the use of bicycles.*] (*g*)

Fines to be recovered summarily may be imposed by any such byelaws on persons breaking any byelaw made under this section, provided that no fine exceeds for any one offence the sum of two pounds, and that the byelaws are so framed as to allow of the recovery of any sum less than the full amount of the fine.

Saving for Minerals.

To whom minerals under disturnpiked roads to belong. 11 & 12 Vict. c. 63. 38 & 39 Vict. c. 55.

27. Notwithstanding anything contained in section sixty-eight of the Public Health Act, 1848, or in section one hundred and forty-nine of the Public Health Act, 1875 (*h*), all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority; but so nevertheless that in such working and getting no damage shall be done to the road or highway (*i*).

. . . .

(*g*) The provisions of this sub-section were repealed by s. 85 of the L. G. A., 1888, *ante*, p. 779. That section contains general regulations for bicycles, tricycles, etc.

(*h*) *Ante*, p. 269.

(*i*) This provision seems to have been inserted *ex abundanti cautelâ*. See *per* COTTON, L.J., in *Rolls* v. *St. George's, Southwark, Vestry* (1880), 14 Ch. D., at p. 799. A railway company constructed a railway on the level across a highway in the district of which the relators were the urban sanitary authority. Subsequently the defendants worked coal mines in a proper and usual manner beneath the highway, with the result that a gradual and uniform subsidence of the highway, railway, and surrounding land to the extent of about ten feet vertically took place. No actual damage was done to the highway thereby, nor was it rendered less convenient, but the railway company placed ballast under their line so as to maintain it at its original level, thus forming an embankment obstructing the use of the highway:—*Held*, in an action against the defendants, that upon the facts there was no case for an injunction or for substantial damages; but *per* COLLINS, J., that, assuming the highway to be vested in the relators under s. 149 of the P. H. A., 1875, they were entitled to judgment with nominal damages for the injury to their proprietary right (*Att.-Gen.* v. *Conduit Colliery Co.*, [1895] 1 Q. B. 301; 59 J. P. 70). See also *Lodge Holes Colliery Co., Ltd.* v. *Wednesbury Corporation*, [1908] A. C. 323. The remainder of this section extending it to the Isle of Wight and to South Wales is repealed by the S. L. R. A., 1898, as having been rendered unnecessary by the L. G. A., 1888, ss. 12, 13, *ante*, pp. 747, 748.

PART II.

Amendment of Locomotive Acts, 1861 and 1865 (*k*).

Weight of locomotives and construction of wheels. 24 & 25 Vict. c. 70. 28 & 29 Vict. c. 83.

28. (*l*) . . . it shall not be lawful to use on any . . . highway a locomotive constructed otherwise than in accordance with the following provisions; (that is to say,)

(1) A locomotive not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons; and

(2) A locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than two inches in width for every ton in weight of the locomotive, unless the diameter of such wheels shall exceed five feet, when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such tires shall not be less than fourteen inches; and

(3) A locomotive shall not exceed nine feet in width or fourteen tons in weight, except as hereinafter provided; and

(4) The driving wheels of a locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed three inches (*m*).

The owner of any locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding five pounds: Provided, that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorise such locomotive to be used on any . . . highway within the areas respectively above mentioned, or part of any such . . . highway, under such conditions (if any) as to them may appear

(*k*) This Part of this Act does not apply to light locomotives. See the Locomotives on Highways Act, 1896, s. 1, and Schedule. By s. 1 (1) of that Act a light locomotive is defined as including (1) any vehicle propelled by mechanical power if it is under five tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight unladen six and a half tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause; and (2) the vehicle so drawn by such locomotive. To this general rule there are two exceptions: (1) military motor cars, and (2) motor cars registered before 1st September, 1904, if properly re-registered. See the Heavy Motor Car Order, 1904, art. 17 (a); Heavy Motor Car (Amendment) Order, 1911, art. 1; Heavy Motor Car Order, 1904, arts. 4 (5) and 15 (2). See *Pilgrim* v. *Simmonds* (1911), 75 J. P. 427. And all self-propelled vehicles, whether light or heavy motor cars, are "light locomotives" if their weight unladen does not exceed five tons (*Evans* v. *Nicholl*, [1909] 1 K. B. 778; 73 J. P. 154). Section 6 of the Act enables the L. G. B. to make regulations with respect to the use of light locomotives on highways and their construction, and the conditions under which they may be used. And s. 7 makes the breach of such regulations punishable on summary conviction by a fine not exceeding ten pounds. See further the Heavy Motor Car Order, 1904, art. 3.

(*l*) The commencement of this section is repealed by the S. L. R. A., 1894. Words relating to turnpike roads are omitted from this section and s. 30, *post*, p. 1686, because repealed as obsolete by the S. L. R. A., 1898.

(*m*) See *Stringer* v. *Sykes* (1876), 2 Ex. D. 240. By s. 9 of the Locomotives on Highways Act, 1896, the requirements of this sub-section may be from time to time varied by the L. G. B. See Orders of the Board dated November 26th, 1897 (Stat. R. & O., 1897, p. 450; 61 J. P. 778), and November 4th, 1898 (Stat. R. & O., 1898, p. 571; 28th Rep. L. G. B. App. 59).

desirable: Provided also, that the owner of a locomotive used contrary to the provisions of sub-section two of this section shall not be deemed guilty of an offence under this section if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the passing of this Act, and that the tires of the wheels thereof are not less than nine inches in width (*n*).

29. [*Amendment of* 28 *&* 29 *Vict. c.* 83, *s.* 3.] (*o*)

Steam locomotives to be constructed so as to consume their smoke.

30. (*p*) . . . every locomotive used on any . . . highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its own smoke, shall be liable to a fine not exceeding five pounds for every day during which such locomotive is used on any such . . . highway (*q*).

31. [*Power to local authorities to make orders as to hours during which locomotives may pass over roads.*] (*o*)

32. [*Power of county authorities to license locomotives.*] (*o*)

Duration of Part II. of Act. 28 & 29 Vict. c. 83.

33. This Part of this Act shall remain in force so long only as the Locomotive Act, 1865, continues in force (*r*).

PART III.

PROCEDURE AND DEFINITIONS.

Confirmation of Provisional Order.

34. It shall be lawful for the Local Government Board to submit any Provisional Order made by them under this Act to Parliament for confirmation, and without such confirmation a Provisional Order shall not be of any validity (*s*).

Confirmation of byelaws.

35. A byelaw made under this Act, and any alteration made therein and any repeal of a byelaw, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board.

A byelaw made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of

(*n*) It is to be observed that this section does not in any way protect a person who uses a locomotive constructed as here provided and properly managed, having regard to the provisions of the Locomotive Acts, if damage results from its use (*Powell* v. *Fall* (1879), 5 Q. B. D. 597; *Gunter* v. *James* (1908), 72 J. P. 448; 24 T. L. R. 868; and see *Galer* v. *Rawson* (1889), W. N. 180; 6 T. L. R. 17; *Bantwick* v. *Rogers* (1890), 7 T. L. R. 542; *Eyre* v. *Paddington Vestry*, Times, June 5th, 1891). Thus, where a traction engine weighing over ten tons in passing through a street broke one of the water mains laid under the street, and being the property of a corporation in whom also, as road authority, was vested the duty of maintaining the roads, the owner of the engine was held liable although there was no negligence or want of skill or care on the part of him or his servants in the care and construction of the engine, there being also no default or neglect by the plaintiffs as road authority, and the mains being sufficiently strong and well laid to withstand the ordinary traffic of the district (*Chichester Corporation* v. *Foster*, [1906] 1 K. B. 167; 70 J. P. 73). The owner of a locomotive who has let it on hire is not liable for injuries caused by the negligence of the hirer, though his name is on it (*Smith* v. *Bailey*, [1891] 2 Q. B. 403; 56 J. P. 116). As to the liability to be indicted for using a traction engine on a highway, see *R.* v. *Chittenden* (1885), 49 J. P. 503. As to liability to be restrained by an injunction from causing a public nuisance, see *Att.-Gen.* v. *Scott*, [1905] 2 K. B. 160; 69 J. P. 109. And see *Cavan C. C. and Bailieborough R. D. C.* v. *Kane*, *ante*, p. 1679.

(*o*) Sections 29, 31 and 32 are repealed by the Locomotives Act, 1898, s. 18, *post*, p. 1915, but see the provisoes to that section as to byelaws and local Acts. See also ss. 5, 6, 9 and 17 of that Act.

(*p*) See note (*l*), *ante*, p. 1685.

(*q*) The burden of proving that a locomotive does consume its own smoke is on the defendant (*Pitt Rivers* v. *Glasse* (1891), 55 J. P. 663; 7 T. L. R. 438).

(*r*) That Act is continued by the Expiring Laws Continuance Acts.

(*s*) See notes to s. 16, *ante*, p. 1675.

one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

36. All offences fines and expenses under this Act, or any byelaw made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts (*t*). Recovery of penalties and expenses.

. . . . .

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrates, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty session or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

37. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal therefrom . . . to the next practicable court of quarter sessions. . . . (*u*) Form of appeal to quarter sessions.

38. In this Act— Interpretation.

"County" has the same meaning as it has in the Highway Acts, 1862 and 1864 (*x*), except that every liberty (*y*) not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county: 25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

"County authority" means the justices of a county in general or quarter sessions assembled (*z*):

"Borough" means any place for the time being subject to the Municipal Corporations Act, 1835, and the Acts amending the same (*a*):

"Highway district" (*b*) means a district constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts: 25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

"Highway board" means the highway board having jurisdiction within a highway district:

"Highway parish" means a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts: 25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

(*t*) The definition of this expression here following is repealed by the S. L. R. A., 1894. See now the Interpretation Act, 1889, s. 13 (10).

With regard to the liability of servants to penalties and the exoneration of the owner in certain cases, see the Locomotives Act, 1898, s. 13, *post*, p. 1913.

(*u*) The remainder of this section is repealed by the S. J. A., 1884.

(*x*) Although for the purposes of the Highway Act, 1862, boroughs are not to be considered parts of counties, yet for the purposes of s. 13 it was held that the word "county" was used geographically, and so, therefore, as to include a borough within the county (*Over Darwen Corporation* v. *Lancashire JJ.* (1884), 15 Q. B. D. 20; 48 J. P. 437).

(*y*) The recorder of such a liberty is a county authority so as to be able to hear an application under s. 15, *ante*, p. 1675, to have certain roads declared main roads (*R.* v. *Dover Recorder* (1884), 48 J. P. 420; 32 W. R. 876).

(*z*) The powers and duties of the quarter sessions as the county authority are now transferred to the county council by the L. G. A., 1888, s. 3 (viii).

(*a*) Now the Municipal Corporations Act, 1882. See s. 242 of that Act.

(*b*) See *Middlesex C. C.* v. *Willesden and Hendon U. D. Councils* (1896), 60 J. P. 630.

"Highway authority" means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the highway board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties (*c*):

38 & 39 Vict. c. 55. "Rural sanitary district" and "rural sanitary authority" mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875 (*d*):

38 & 39 Vict. c. 55. "Urban sanitary district" (*e*) and "urban sanitary authority" mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875 (*f*), except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district; and where part of a parish is included in such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act:

18 & 19 Vict. c. 120. "The metropolis" means the parishes and places mentioned in the Schedules A., B., and C., annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided; also the city of London and the liberties of the said city:

"Quarter sessions" includes general sessions:

9 Geo. 4, c. 43. "Petty sessional division" means any division for the holding a special sessions formed or to be formed under the provisions of the Division of Counties Act, 1828, or any Act amending the same; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate, or district constituted a petty sessional division by

12 & 13 Vict. c. 18. the Petty Sessions Act, 1849:

"Locomotive" means a locomotive propelled by steam or by other than animal power (*g*):

"Person" includes a body of persons corporate or unincorporate.

THE DISTRICT AUDITORS ACT, 1879.

(42 & 43 VICT. c. 6.) (*h*)

An Act to amend the Law with respect to District Auditors.

[28th March 1879.]

Short title. **1.** This Act may be cited as "The District Auditors Act, 1879."

(*c*) By s. 25 of the L. G. A., 1894, *ante*, p. 1003, the rural district councils are now constituted the highway authorities for their districts.

(*d*) See *ante*, pp. 37, 40.

(*e*) See *Middlesex C. C.* v. *Willesden and Hendon U. D. Councils* (1896), 60 J. P. 630.

(*f*) *Ante*, p. 37, and see s. 11 (2) of the L. G. A., 1888, *ante*, p. 740, and notes.

(*g*) This includes a tricycle capable of being propelled by steam (*Parkyns* v. *Priest* (1881), 7 Q. B. D. 313; 45 J. P. 751); but not a steam tramcar used by virtue of statutory powers (*Bell* v. *Stockton Steam Tramways Co.* (1887), 51 J. P. 804; 3 T. L. R. 511; and see 59 & 60 Vict. c. 36.

(*h*) See the P. H. A., 1875, ss. 247, 248, *ante*, pp. 541, 547; also 7 & 8 Vict. c. 101; 11 & 12 Vict. c. 91; 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113, *ante*, pp. 1474, 1476, 1493. The preamble of this Act reciting s. 24 of the Poor Law Amendment Act, 1868, was repealed by the S. L. R. A., 1894. As to the omission of the clause of enactment, see s. 4 of the same Act.

2. (*i*) The whole of the salaries or remuneration and of the expenses of district auditors, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament; and for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty for the use of her Majesty, according to the scale contained in the First Schedule to this Act, and such duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned. Payment of district auditors.

3. Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section six of the Poor Law Amendment Act, 1866) a financial statement in duplicate in the prescribed form and containing the prescribed particulars (*l*); one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement. Financial statement with stamped certificate of district auditor. 29 & 30 Vict. c. 113, s. 6.

He shall forthwith send the duplicate so stamped and certified by him to the Local Government Board; and in such case a return of the receipts or expenditure comprised in such statement need not, unless the Local Government Board so require, be sent to the Board in pursuance of the Local Taxation Returns Acts, 1860 and 1877. 23 & 24 Vict. c. 51. 40 & 41 Vict. c. 66.

4. The Local Government Board may from time to time appoint such number of district auditors as they may, with the sanction of the Treasury, think necessary for the performance of the duties of auditing the accounts which are for the time being by law subject to be audited by district auditors, and may from time to time remove such auditors. Appointment and districts of district auditors.

The Board may from time to time assign to district auditors their duties, and the districts in which such auditors respectively are to act, and may from time to time change wholly or in part such duties or districts; and every district so assigned to a district auditor, whether originally or upon any change, shall be deemed to be an audit district within the meaning of any enactment relating to district auditors or their districts, and the auditor to whom any district is assigned shall be deemed to be the district auditor for that district.

The Board may also, with the consent of the Treasury, appoint from time to time a person or persons, either temporarily or otherwise, to assist a district auditor in the performance of his duties, and any person so appointed shall, subject to any exceptions made by the terms of his appointment, have the same powers and duties and be subject to the same obligations as the district auditor whom he is appointed to assist.

The Board, with the like consent, may assign to a person so appointed such salary or remuneration and such sum for his expenses as may seem fit, and such salary, remuneration, and expenses shall be paid out of moneys provided by Parliament.

(*i*) Words at the commencement of this section were repealed by the S. L. R. A., 1894.

(*l*) The Orders now regulating the form of the financial statements of sanitary authorities are set out in App. II., *post*, p. 2166.

Regulations as to audit.

5. Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by Order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an Order under this section shall be deemed to be an Order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834 (*m*).

4 & 5 Will. 4, c. 76.

Stamp duties under Inland Revenue.

6. The duties charged under this Act shall be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, shall apply accordingly; and such duties may, if the commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by this Act.

Failure to submit financial statement.

7. If a local authority fail to comply with the provisions of this Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer, shall be liable to a fine not exceeding twenty pounds for each offence, to be recovered by action on behalf of her Majesty in the High Court (*n*).

Definitions.

8. In this Act,—

The expression "local rate" means the poor rate, the general district rate, and every rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of a poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The expression "local authority" means any person or body of persons who receive and expend any local rate, but does not include overseers of the poor.

The expression "prescribed" means prescribed from time to time by the Local Government Board (*o*).

* * * * *

Auditors appointed under repealed Act.

11. . . .

(2) Any auditor appointed in pursuance of any enactment hereby repealed shall (save as may be prescribed) have the same powers and duties and be subject to the same obligations as if such enactment had not been repealed.

(*m*) For these Orders reference should be made to App. II., *post*.

(*n*) Probably only by the Crown (*Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 354; 47 J. P. 405).

(*o*) The remainder of this section, and ss. 9, 10, and parts of 11 and 12 and the Second Schedule were repealed by the S. L. R. A., 1894.

12. Nothing in this Act shall prevent a district auditor from recovering . . . any expenses which he may incur, in any proceedings which he is authorised or required to take or defend under the statutes in that behalf (*p*). Saving of certain fees and expenses.

FIRST SCHEDULE (*q*).

SCALE OF STAMP DUTIES PAYABLE BY LOCAL AUTHORITIES.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under £20	5*s*.
£20 and under £50	10*s*.
£50 and under £100	£1.
£100 and under £500	£2.
£500 and under £1,000	£3.
£1,000 and under £2,500	£4.
£2,500 and under £5,000	£5.
£5,000 and under £10,000	£10.
£10,000 and under £20,000	£15.
£20,000 and under £50,000	£20.
£50,000 and under £100,000	£30.
£100,000 and upwards	£50.

For the purpose of this Schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept.

* * * * *

THE SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

(42 & 43 VICT. c. 30.) (*r*)

An Act to amend the Sale of Food and Drugs Act, 1875. [21st July 1879.]

WHEREAS conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act: 38 & 39 Vict. c. 63.

1. This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879. Short title.

2. In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the In sale of adulterated articles no defence to allege purchase for analysis.

(*p*) See note (*h*), *ante*, p. 1688.

(*q*) The provisions of this Act were applied to county councils by the L. G. A., 1888, s. 71 (3), and this schedule was modified so far as relates to expenditure amounting to £100,000 and upwards, as follows: Where the total expenditure is above £100,000 and under £150,000, £50; £150,000 and under £200,000, £60; £200,000 and upwards, £15 in addition for every £50,000, or part thereof.

(*r*) See the Sale of Food and Drugs Act, 1875, *ante*, p. 1577, and the Sale of Food and Drugs Act, 1899, *post*, p. 1965. As to the omission of the clause of enactment, see the S. L. R. A., 1894, s. 4.

purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects (*s*).

Officer, inspector or constable may obtain a sample of milk at the place of delivery to submit to analysis.

3. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery any sample of any milk in course of delivery (*t*) to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act (*u*).

Penalty for refusal to give milk for analysis.

4. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such

(*s*) See the Sale of Food and Drugs Act, 1875, s. 6, *ante*, p. 1578, and the notes thereon. The last clause of this section was passed to meet the decision in *Davidson* v. *Macleod* (1878), 42 J. P. 43, 50.

(*t*) As to the meaning of these words, see *Telford* v. *Fyfe*, [1908] S. C. (J.) 83.

(*u*) *Ante*, p. 1584. This section and s. 4 following are by the Sale of Food and Drugs Act, 1899, s. 14, *post*, p. 1972, applied to every article of food other than milk subject to the request or consent of the purchaser or consignee for the taking of samples. As to forwarding to the consignor a portion of the sample of milk taken, see the Sale of Food and Drugs Act, 1899, s. 10, *post*, p. 1971. It is not necessary to state the intention and to divide the sample of milk thus taken, as required by 38 & 39 Vict. c. 63, s. 14 (*Rouch* v. *Hall*, *ante*, p. 1585; *Chappell* v. *Emson* (1884), 48 J. P. 200).

It is not necessary for an inspector to prove that he is a duly authorised officer; so held by CHANNELL and AVORY, JJ., in *Ross* v. *Helm*, [1913] 3 K. B. 462; 77 J. P. 13.

An inspector having taken a sample of milk, under s. 3, divided it, retained one part, and submitted the other part to be analysed:—*Held*, following *Rouch* v. *Hall*, that he was not bound to submit for analysis the whole of the sample taken by him (*Rolfe* v. *Thompson*, [1892] 2 Q. B. 196). And see *Harris* v. *Williams*, the facts of which are stated, *ante*, p. 1584.

The appellant, who lived at C., contracted with a dairy company for the sale to them of the milk from his dairy, to be delivered at London, or at such other station as the purchasers should from time to time appoint; the carriage of the milk from C. to be paid by the purchasers. The purchasers appointed H. as a station for the delivery of milk under the contract. The appellant consigned milk from C. to the purchasers at H.; immediately on its arrival at the latter station, and before possession was taken of it by the purchasers, a sample was taken by the respondent, which, upon analysis, was found to be adulterated by the addition of water:—*Held*, that, notwithstanding the provision for payment of the carriage by the purchasers, H. was the place of delivery of the milk to the purchasers within the meaning of the section; and the appellant was, therefore, rightly convicted of an offence under the Act (*Filshie* v. *Evington*, [1892] 2 Q. B. 200; 56 J. P. 312). And see *Lush* v. *Wilson* (1890), 54 J. P. 73, a decision by the Recorder of Reading as to the place of delivery.

The appellant contracted to supply milk to a workhouse at a certain price. By the contract the milk was to contain a certain percentage of cream, it was to be tested on each delivery, and a reduction was to be made in the price in respect of any deficiency of cream. While the daily supply, contained in five cans, was being delivered at the workhouse, the respondent, acting under the above section, procured a sample from each of the five cans. There being a large deficiency of cream in two of the samples, the respondent subsequently laid two separate informations against the appellant, in respect of those two samples, under s. 9 of the principal Act. The justices convicted the appellant in a separate penalty upon each information:—*Held*, that the procuring of each sample was a separate transaction; that the appellant had committed a separate offence as to each can in respect of which an information was laid; that the separate informations were therefore properly laid, and the convictions were right. It was also held that the provisions in the contract

officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds.

5. Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act (x). Sale in streets, etc.

6. In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than Reduction of spirit allowed.

as to deficiency of cream were immaterial in the determination of the question whether the appellant had committed an offence under the Act (*Fecitt* v. *Walsh*, [1892] 2 Q. B. 304; 55 J. P. 726).

The servant of the defendant, a wholesale milk dealer, in pursuance of a contract between his master and a retail milk seller, took milk from his master's cart in cans belonging to his master into the retail milk seller's shop, and there poured it into empty cans belonging to the retail milk seller. An inspector and his assistant were present while this was being done, and immediately after the milk had been poured into the retail milk seller's cans the inspector took a sample of it, and it was held that the milk was still in course of delivery when the sample was taken (*Semple* v. *Dunbar* (1905), 6 F. (Just. Cas.) 65).

The sample must be fairly taken and fairly represent the bulk of the milk in course of delivery. Where a dairy farmer supplied a dairyman with 22 gallons of milk in part fulfilment of a contract to supply 40 gallons of milk daily, and the 22 gallons were supplied in three cans, of which two contained 8 gallons each, and the other 6 gallons, and the whole of the two cans of 8 gallons each, together with 4 gallons from the can containing 6 gallons, were poured into one vessel, and the remaining 2 gallons into another, and an inspector took a sample from each of these vessels, which, when analysed, showed 3·05 per cent. milk fat in the sample from the vessel containing the 20 gallons, but only 2·8 per cent. in the other sample, it was held that this latter sample was not a fair sample of the 6 gallons contained in the original can (*Crawford* v. *Harding*, [1907] S. C. (J.) 11). A consignment of milk was delivered in sixteen cans which were cylindrical in shape and about two feet deep. Each can was taken into a store room by the consignor's servant, where it was opened by him. An inspector then agitated the milk in the can with a wooden spoon about a foot in length, and a sample was taken by dipping a measure into the milk just under the surface and removing about 14 ounces. Samples were thus taken from fourteen of the cans. The court were of opinion that the method of sampling was not unfair or improper, and that it afforded a fair test of the contents of each can (*Telford* v. *Fyfe*, [1908] S. C. (J.) 83). An inspector saw the respondent deliver milk to a woman by pouring it into a jug. As soon as she had paid for the milk she went into her house and shut the door. The inspector then knocked at the door, and it was opened by the woman, who still had the jug in her hand, the milk being in the same condition as when she received it. The respondent was under a contract to deliver to the woman pure milk from the cow. Upon analysis it was found that the milk contained 30 per cent. of added water. It was held by PICKFORD and LUSH, JJ. (Lord ALVERSTONE, C.J., *dissentiente*), that there was evidence upon which the justices could find that delivery was complete before the sample had been taken (*Helliwell* v *Haskins*, [1911] W. N. 129; 75 J. P. 435). A dairyman delivered a consignment of 42 gallons of milk in six barrels, which were sampled thus: Four barrels were poured out separately and a sample taken of each. The fifth and sixth were poured together and a sample taken. An average of the five samples was then taken as representing the quality of the entire consignment. It was held that the method adopted was fair and proper and caused no prejudice to the defendant (*Lamont* v. *Rodger*, [1911] S. C. (J.) 24).

The defendant may be convicted upon a summons alleging an offence under s. 6 of the principal Act, although it is proved that there was a seizure under this section, unless he applies for an amendment or adjournment under s. 1 of the S. J. A., 1848 (*Hiett* v. *Ward* (1894), 58 J. P. 461; 70 L. T. 374).

The power given by this section cannot be exercised by an inspector of nuisances outside the district for which he was appointed (*McNair* v. *Cave*, [1903] 1 K. B. 24; 67 J. P. 50).

The sample may be procured by the assistance of an agent, and in such case the proceedings will be rightly instituted and carried on by and in the name of the inspector himself (*Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867).

(x) *Ante*, p. 1586.

twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin (*y*).

Extension of meaning of "county."

7. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act.

8. [*Quarter sessions boroughs not to contribute to county analyst.*] (*z*)

Provision for boroughs with separate police.

9. The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force (*a*).

10. [*Special provision as to time for proceedings.*] (*b*)

THE PETROLEUM ACT, 1879.

(42 & 43 VICT. c. 47.) (*c*)

An Act to continue and amend the Petroleum Act, 1871.

[11th August 1879.]

Short title and construction of Act. 34 & 35 Vict. c. 105.

1. This Act may be cited as the Petroleum Act, 1879.

This Act shall be construed as one with the Petroleum Act, 1871, and together with that Act may be cited as the Petroleum Acts, 1871 and 1879.

Definition of petroleum. 34 & 35 Vict. c. 105.

2. (*d*) . . . In the Petroleum Act, 1871, the term "petroleum to which this Act applies" shall mean such of the petroleum defined by section

(*y*) This section was passed in consequence of the decisions in *Pashler* v. *Stevenitt* (1877), 41 J. P. 136; 35 L. T. 862; *Webb* v. *Knight* (1876), 2 Q. B. D. 530; 41 J. P. 726.

Where the appellant sold to the respondent gin more than thirty-five degrees under proof, but at the time of sale brought to his knowledge a printed notice hanging up in the room to the effect that all spirits were sold "as diluted spirits, no alcoholic strength guaranteed," it was held that this section did not deprive the appellant of his ground of defence under 38 & 39 Vict. c. 63, s. 6, that the sale was not to the prejudice of the purchaser (*Gage* v. *Elsey* (1883), 10 Q. B. D. 518; 47 J. P. 391). See *Newby* v. *Sims*, *ante*, p. 1587; *Morris* v. *Johnson*, *Morris* v. *Askew*, and *Dawes* v. *Wilkinson*, *ante*, p. 1582.

(*z*) This section is repealed by the Municipal Corporations Act, 1882, as to boroughs to which that Act applies, and is altogether repealed by the S. L. R. A., 1894, being superseded by ss. 31—39 of the L. G. A., 1888, *ante*, p. 759.

(*a*) See the Sale of Food and Drugs Act, 1875, s. 29, *ante*, p. 1593. In a borough having a population of less than 10,000 the power of appointing analysts is transferred to the county council by s. 39 of the L. G. A., 1888, *ante*, p. 765. By s. 1 of the Weights and Measures Act, 1893, when the amount received by the county council from the execution of the Weights and Measures Acts, 1878—1892, is in excess of the expenditure thereupon, a proportionate part of such excess amount shall be deducted from any sum due to such borough as is mentioned in s. 1 of the Weights and Measures Act, 1893, as a recoupment under the Contagious Diseases (Animals) Acts (now see the Diseases of Animals Act, 1894), or the Sale of Food and Drugs Acts respectively.

(*b*) This section is repealed by the Sale of Food and Drugs Act, 1899, s. 27, and Schedule, *post*, p. 1976. See now as to time for proceedings, s. 19 of that Act, and *Batt* v. *Mattinson* (1900), 64 J. P. 615; 82 L. T. 800.

(*c*) See the Petroleum Act, 1871, *ante*, p. 1577, and the Petroleum (Hawkers) Act, 1881, *post*, p. 1700, and the Locomotives on Highways Act, 1896, s. 5. See s. 4 of the S. L. R. A., 1894, as to the omission of the clause of enactment.

(*d*) The recital to this section was repealed by the S. L. R. A., 1894.

three of that Act as, when tested in manner set forth in Schedule One to this Act, gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometer.

Every reference in the Petroleum Act, 1871, to Schedule One to that Act shall be construed to refer to Schedule One to this Act.

Verification of test apparatus.

3. A model of the apparatus for testing petroleum, as described in Schedule One to this Act, shall be deposited with the Board of Trade, and the Board of Trade shall, on payment of such fee, not exceeding five shillings, as they from time to time prescribe, cause to be compared with such model and verified every apparatus constructed in accordance with Schedule One to this Act which is submitted to them for the purpose, and if the same is found correct shall stamp the same with a mark approved of by the Board and notified in the London Gazette.

An apparatus for testing petroleum purporting to be stamped with the said mark shall, until the contrary is proved, be deemed to have been verified by the Board of Trade.

All fees under this section shall be paid into the Exchequer (*e*).

* * * * *

FIRST SCHEDULE. [Sect. 2.]

Mode of testing Petroleum so as to ascertain the Temperature at which it will give off Inflammable Vapour.

Specification of the Test Apparatus.

The following is a description of the details of the apparatus:

The oil cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top, and $1\frac{7}{8}$″ from the bottom of the cup. It is made of gun metal or brass (17 B.W.G.) tinned inside. A bracket, consisting of a short stout piece of wire bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B.W.G.), which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate, it is provided with a spout, the mouth of which is one-sixteenth of an inch in diameter. The socket which is to hold the thermometer is fixed at such an angle and its length is so adjusted that the bulb of the thermometer when inserted to its full depth shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre, $\frac{5}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of and in line with the mouth of the lamp, is fixed a white bead, the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B.W.G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B.W.G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and

(*e*) Sections 4—6 were repealed by the S. L. R. A., 1894. Section 4 related to the continuance of 34 & 35 Vict. c. 105, s. 5 to the commencement of this Act, and s. 6 to the repeal of certain parts of 34 & 35 Vict. c. 105.

inwards about ⅜″; that is, its diameter is about ⅝″ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite, to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath and of the oil lamp is one-half of an inch. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B.W.G.) flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is 6½″. One of the three legs of the stand serves as support for the spirit lamp attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1″.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked out on an ivory back fastened to the tube in the usual way. It is fitted with a metal collar, fitting the socket, and the part of the tube below the scale should have a length of about 3½″ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb 2¼″.

NOTE.—A model apparatus is deposited at the Weights and Measures Department of the Board of Trade.

Directions for applying the Flashing Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65° the samples to be tested should be cooled down (to about 60°) by immersing the bottles containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is placed into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum, which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66° the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree, in the following manner:

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

Note.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low vitality, the mode of proceeding is to be modified as follows:

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water (*f*).

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THE PUBLIC WORKS LOANS ACT, 1879.

(42 & 43 Vict. c. 77.) (*g*)

An Act to amend the Acts relating to the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland, and to grant money for the purpose of Loans by the said Commissioners; and for other purposes in relation thereto. [15th August 1879.]

1. This Act may be cited as "The Public Works Loans Act, 1879." Short title.

PART I.

Amendment of Acts.

2. Where a loan is granted by the Public Works Loan Commissioners, or by the Commissioners of Public Works in Ireland, and the rate of interest for such loan, fixed by the special Act which authorises the Commissioners to grant the loan, is a special rate less than five per cent., such loan shall, notwithstanding anything in the special Act, bear interest at a rate not less than the rate in the special Act, and such other rate as may be necessary, Minimum rate of interest for loans.

(*f*) The Second Schedule, containing the repealed parts of the Petroleum Act, 1871, was repealed by the S. L. R. A., 1894.

(*g*) See the Public Works Loans Act, 1875, *ante*, p. 1608. The preamble to this Act was repealed by the S. L. R. A., 1894. As to the omission of the clause of enactment, see s. 4 of that Act.

in the judgment of the Treasury, in order to enable the loans to be made without loss to the Exchequer (*h*).

3. [*Restriction on amount of loan to one borrower.*] (*i*)

Act not to apply to old loans.

4. Nothing in this Act shall apply to any loan granted before the passing of this Act, nor to any instalments subsequently advanced in respect of such loan . . . (*k*).

Provided, that where though a loan has not been actually granted before the passing of this Act, negotiations for the same have proceeded so far as to make it in the opinion of the Treasury inequitable for such loan to be subject to the provisions of this Act or any of them, such loan shall, for the purposes of those provisions, be deemed to be a loan granted before the passing of this Act.

5. [*Power to lend to Peabody Trustees.*] (*l*)

6. [*Power to lend to labourers' dwellings companies.*] (*m*)

7. [*Regulations as to advances by National Debt Commissioners to the Public Works Loan Commissioners.*] (*n*)

8. [*Application of* 38 & 39 *Vict. c.* 89, *to money advanced by National Debt Commissioners.*] (*n*)

* * * * *

THE PUBLIC WORKS LOANS ACT, 1881.

(44 & 45 VICT. C. 38.) (*o*)

An Act to grant money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners.

[22nd August 1881.]

Short title.

1. This Act may be cited as "The Public Works Loans Act, 1881."

PART I.

Grant of Money for Public Works Loan Commissioners during the period ending 30th June, 1882.

(*h*) In the application of this Act to loans granted after June 28th, 1892, the above section is to have effect as if 4 per cent. were therein substituted for 5 per cent. See the Public Works Loans Act, 1892, s. 2.

(*i*) This section is repealed by the Public Works Loans Act, 1897, ss. 3, 12 (4), and Sched. II.

(*k*) The remainder of this paragraph relating to local matters or Irish matters only is here omitted.

(*l*) This section is now repealed by the S. L. R. A., 1894.

(*m*) This section was repealed by the Housing of the Working Classes Act, 1890, s. 102, *ante*, p. 929. See now s. 67 of that Act, *ante*, p. 918.

(*n*) These sections were repealed by the National Debt and Local Loans Act, 1887, as from the date when an Act passed in the year 1887, authorising the advance of money for local loans (the Public Works Loans Act, 1887), came into operation, and without prejudice to any charge on the Consolidated Fund of any advance until the security for such advance should be exchanged in pursuance of the repealing Act. Section 9 had merely a local application, and is now repealed by the S. L. R. A., 1894. Section 10 (relating to the provision of money for the purpose of loans), s. 11 (relating to Ireland only), and the Schedule (containing certain repealed enactments), are also repealed by the same Act.

(*o*) See the Public Works Loans Act, 1875, *ante*, p. 1608. The preamble to this Act was repealed by the S. L. R. A., 1894. See also s. 4 of that Act as to the omission of the clause of enactment.

PART II.

Grant of Money for Public Works Commissioners, Ireland, during the period ending 30th June, 1882.

PART III.

Remission, etc. of Loans in various cases.

* * * * *

AMENDMENT OF ACTS.

7. Where the Public Works Loan Commissioners have, either before or after the passing of this Act, in pursuance of the Public Works Loans Act, 1875 (*p*), or of any enactment repealed by that Act, taken possession of any mortgaged property, and after the passing of this Act advance any sum for the completion, repair, improvement, or security of that property, the rate of interest on such sum shall, notwithstanding anything in section twenty-two of the Public Works Loans Act, 1875, or any like enactment repealed by that Act, be not less than five per cent. per annum.

Amendment of 38 & 39 Vict. c. 89, s. 22, as to rate of interest for loan.

8. The Local Government Board may make orders as to the expenses incurred by them or by any officer appointed by them in making or conducting any examination in pursuance of section thirty-six (*q*) of the Public Works Loans Act, 1875, for the purpose of ascertaining that any loan or part of a loan advanced by the Public Works Loan Commissioners either before or after the passing of this Act, on the security of a rate, has been applied to the purpose for which the same was advanced.

Expenses of ascertaining (under 38 & 39 Vict. c. 89, s. 36) that loans advanced by the Public Works Loan Commissioners have been properly applied.

Any such order may contain directions as to the parties by whom, and the rates out of which such expenses shall be borne, and on the application of the Local Government Board may be made a rule of the High Court of Justice in England, or of the High Court of Session in either division of the Inner House thereof in Scotland.

9. The unapplied balance of any loan advanced by the Public Works Loan Commissioners, either before or after the passing of this Act, on the security of a rate, may, with the consent of the said commissioners, and of the central authority or department, if any, with whose sanction or consent such loan was authorised to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are properly applicable; and in construing section thirty-six (*q*) of the Public Works Loans Act, 1875, and section four (*r*) of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance as aforesaid is so applied, shall be deemed to be the purpose for which that portion of the loan was advanced (*s*).

Application of surplus balances of loans made by the Public Works Loan Commissioners.

41 Vict. c. 18.

* * * * *

(*p*) See s. 22, *ante*, p. 1614.
(*q*) See the section, *ante*, p. 1618.
(*r*) See this section, *ante*, p. 1672.
(*s*) It will be observed that the present section applies only to unapplied balances of loans advanced by the Public Works Loan Commissioners. If, therefore, a loan sanction issued by the L. G. B. has been only partially acted upon, the section will not facilitate an advance of the balance by the Commissioners for the purposes of works not at first contemplated.
Section 10 relates to local matters only; and the remaining sections of the Act apply only to Ireland.

THE PETROLEUM (HAWKERS) ACT, 1881.

(44 & 45 VICT. c. 67.) (*t*)

An Act to regulate the Hawking of Petroleum and other substances of a like nature. [27th August 1881.]

Power to hawk petroleum. 34 & 35 Vict. c. 105.

1. Any person who is licensed in pursuance of the Petroleum Act, 1871, to keep petroleum to which that Act applies may, subject to the enactments for the time being in force with respect to hawkers and pedlars, hawk such petroleum by himself or his servants (*u*).

Regulations for hawking petroleum.

2. With respect to the hawking of petroleum to which the Petroleum Act, 1871, applies, the following regulations shall be observed:

(1) The amount of petroleum conveyed at one time in any one carriage shall not exceed twenty gallons:

(2) The petroleum shall be conveyed in a closed vessel so constructed as to be free from leakage:

(3) The carriage in which the vessels containing the petroleum are conveyed shall be so ventilated as to prevent any evaporation from the petroleum mixing with the air in or about the carriage in such proportion as to produce or be liable to produce an explosive mixture:

(4) Any fire or light or any article of an explosive or highly inflammable nature shall not be brought into or dangerously near to the carriage in which the vessels containing the petroleum are conveyed:

(5) The carriage in which the vessels containing the petroleum are conveyed shall be so constructed or fitted that the petroleum cannot escape therefrom in the form of liquid, whether ignited or otherwise:

(6) Proper care shall be taken to prevent any petroleum escaping into any part of a house or building, or of the curtilage thereof, or into a drain or sewer:

(7) The petroleum shall be stored in some premises licensed for keeping of petroleum and in accordance with the licence for such premises both every night, and also when the petroleum is not in the course of being hawked:

(8) All due precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorised persons having access to the vessels containing the petroleum, and every person concerned in hawking the petroleum shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking:

(9) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, shall be in the carriage while such carriage is being used for the purpose of hawking petroleum.

In the event of any contravention of this section with reference to any

(*t*) See the Petroleum Acts, 1871 and 1879, *ante*, p. 1557, *ante*, p. 1694; and the Locomotives on Highways Act, 1896, s. 5. As to hawking petroleum in a cart before the passing of this Act, see *Coleman* v. *Goldsmith* (1879), 43 J. P. 718. As to the omission of the clause of enactment to this Act, see s. 4 of the S. L. R. A., 1894.

(*u*) A hawker's licence will be necessary. See the Hawkers Act, 1888. As to what constitutes hawking petroleum, see s. 6, *post*, p. 1701. Where a shopkeeper was in the habit of calling on certain days by request with a horse and cart at the houses of customers to supply petroleum which he brought in the cart, not knowing before he reached the house how much, or if any, oil was required, it was held that he was a hawker, and must be licensed as such (*O'Dea* v. *Crowhurst* (1899), 68 L. J. Q. B. 655; 63 J. P. 424. See also *Holland* v. *Hall* (1902), 66 J. P. 424; 86 L. T. 355).

petroleum, the petroleum, together with the vessels containing and the carriage conveying the same, shall be liable to be forfeited, and in addition thereto the licensee by whom or by whose servants the petroleum was being hawked shall be liable on summary conviction to a penalty not exceeding twenty pounds.

Provided that—

(1) Where some servant of the licensee or other person has in fact committed the offence, such servant or other person shall be liable to the same penalty as if he were the licensee:

(2) Where the licensee is charged with a contravention of this section, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if the licensee proves to the satisfaction of that court that he had used due diligence to enforce the execution of this section, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the licensee shall be exempt from any penalty.

Any petroleum other than that to which the Petroleum Act, 1871, applies while in any carriage used for the hawking of petroleum to which the Petroleum Act, 1871, applies, shall for the purposes of this section be deemed to be petroleum to which the Petroleum Act, 1871, applies.

Modification of conditions licence under 34 & 35 Vict. c. 105.

3. Any conditions annexed to a licence granted in pursuance of the Petroleum Act, 1871 (*x*) . . . shall, so far as they are inconsistent with this Act, be void, but save as aforesaid nothing in this Act shall affect the application to a licensee of the provisions of the Petroleum Act, 1871, or of any licence granted thereunder.

Power of constable as to prevention of offences.

4. Where a constable or any officer authorised by the local authority has reasonable cause to believe that a contravention of this Act is being committed in relation to any petroleum, he may seize and detain such petroleum and the vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or not a contravention of this Act, and section thirteen of the Petroleum Act, 1871, shall apply to such constable and officer as if he were the person named in the warrant mentioned in that section, and as if the seizure were a seizure in pursuance of that section.

Saving of rights of municipal boroughs.

5. Nothing in this Act contained shall extend to authorise the hawking of petroleum within the limits of any municipal borough in which, by any lawful authority, such hawking shall have been or may hereafter be forbidden.

Definitions.

6. For the purposes of this Act—

The expression "carriage" includes any carriage, waggon, cart, truck, vehicle, or other means of conveyance by land, in whatever manner the same may be drawn or propelled; and

A person shall be deemed for the purposes of this Act to hawk petroleum if by himself or his servants he goes about carrying petroleum to sell, whether going from town to town or to other men's houses, or selling it in the streets of the place of his residence or otherwise, and whether with or without any horse or other beast bearing or drawing burden.

(*x*) Words here now no longer necessary are repealed by the S. L. R. A., 1894.

Short title and construction of Act. 34 & 35 Vict. c. 105. 42 & 43 Vict. c. 47.

7. This Act may be cited as the Petroleum (Hawkers) Act, 1881.

This Act shall be construed as one with the Petroleum Acts, 1871 and 1879, and together with those Acts may be cited as the Petroleum Acts, 1871 to 1881.

THE COMMONABLE RIGHTS COMPENSATION ACT, 1882.

(45 & 46 VICT. c. 15.) (*y*)

An Act to provide for the better application of moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common. [19th June 1882.]

Short title.

1. This Act may be cited as the Commonable Rights Compensation Act, 1882.

Application of compensation money for common lands

2.—(1) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act (*z*) and any Act incorporated therewith, or of any other Act of Parliament to a committee of commoners (*a*) as compensation for the extinguishment of commonable or other rights or for lands being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the Commissioners (*b*) to call a meeting of the persons interested in such money to consider the application thereof, and the Commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in

(*y*) This Act is included in this Appendix by reason of the provision which it contains in s. 2 (5), vesting recreation grounds in urban sanitary authorities when these are purchased out of moneys paid for the extinction of commonable rights under the Lands Clauses Consolidation Act, 1845, and special Acts which authorise the taking or interfering with common lands. The preamble is repealed by the S. L. R. A., 1898.

(*z*) See ss. 99—107 inclusive of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 1354—1356.

(*a*) As to this committee, see the Lands Clauses Consolidation Act, 1845, s. 103, *ante*, p. 1355, and the case of *Salmon* v. *Edwards*, [1910] 1 Ch. 552; 74 J. P. 177, there set out. Before 1802 the occupiers of certain cottages were accustomed to cut turf on large tracts of commonable and waste lands of a manor. In that year an Inclosure Act was passed by which commissioners were empowered to allot lands in severalty to the lord and other persons interested, and to allot to the lord in trust for the occupiers of the cottages portions of the waste for a turf common, to be managed as the lord and the churchwardens and overseers should order, and not to be depastured. The commissioners by their award, made in 1806, allotted to the lord of the manor, in trust for the occupiers for the time being of the cottages, 425 acres of waste for a turf common for the use of the cottagers. The commissioners also allotted to the lord and other persons interested portions of the enclosed lands in severalty in lieu of their rights and interests. A railway company took for the purposes of their undertaking part of the land allotted as a turf common, and the purchase money was paid into court. On a petition by the freeholder of the cottages for the distribution of the fund, it was held that the owners of the cottages had no claim on the fund; and that the lord of the manor was entitled to such part of the fund as represented the value of the soil in the land taken by the company. It was also held that the remainder of the fund was to be held as a charitable trust for the benefit of the occupiers of the cottages (*Att.-Gen.* v. *Meyrick; In re Christchurch Inclosure Act*, [1893] A. C. 1; 57 J. P. 212). See this case commented on in *Simcoe* v. *Pethick*, [1898] 2 Q. B. 555. Where the relative values of commonable rights could not be strictly ascertained by reason of the land being built over, a fund was ordered to be divided equally among the commoners (*Weatherley* v. *Layton* (1892), W. N., p. 164).

(*b*) See note (*a*), *ante*, p. 1627.

respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways:

(a) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid;

(b) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a Provisional Order for the regulation, of such common land, or of any application to Parliament for a private Bill or otherwise for the preservation and management of such common land as an open space; 8 & 9 Vict. c. 118, etc.

(c) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same;

(d) In the purchase of additional land to be used as common land;

(e) In the purchase of land to be used as a recreation ground for the neighbourhood (*c*);

and any such resolution shall bind the minority and all absent parties, and the Commissioners (*d*) shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons or the legal personal representative of such survivor, shall, upon service of any such order of the Commissioners (*d*) as aforesaid upon them or any of them or any person on their behalf as the Commissioners (*d*) may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

(2) Any land so purchased as aforesaid for use as common land shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts, and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the Commissioners (*d*), pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said Commissioners (*d*) by such majorities as aforesaid.

(3) Every appointment of a new trustee or of new trustees, in pursuance of this Act, shall be subject to confirmation by the Commissioners (*d*) under their seal, and upon such confirmation the land shall vest in the remaining and the newly-appointed trustees without any conveyance.

(4) The Commissioners (*d*) shall publish such notice of any meeting held under this Act, and frame such rules and give such directions for the conduct of such meetings and the service of orders made by them under this Act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time.

(5) Any land so purchased as aforesaid for use as recreation ground shall be conveyed to and vest in the local authority as specified in the Schedule to this Act (*e*) for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878 (*f*).

(*c*) It is only in this case that the urban district council have any interest. See sub-s. (5), *infra*.

(*d*) See note (*a*), *ante*, p. 1627.

(*e*) In urban districts this local authority is the urban sanitary authority. See the Schedule, *post*, p. 1704.

(*f*) 8 & 9 Vict. c. 118, ss. 34, 72—74, 92; 9 & 10 Vict. c. 70, s. 4; 15 & 16 Vict. c. 79,

Application of compensation money for recreation grounds and field gardens.

3. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate or otherwise under the provisions of the Lands Clauses Act, 1845, and any Act incorporated therewith, or of any other Act of Parliament, to any local authority as specified in the Schedule to this Act, or to the churchwardens and overseers of a parish in respect of any recreation ground or allotment for field gardens taken under the powers of any such Act or Acts of Parliament shall be applied in manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively (*g*).

42 & 43 Vict. c. 37.

Provision for cases where money paid by way of compensation has already been applied in the manner authorised by this Act.

4. In any case where money paid by way of compensation as aforesaid has, before the passing of this Act, been applied in any one or more of the ways authorised by this Act, a resolution may be passed, at any meeting of the persons interested, called by the Commissioners in manner provided by this Act (*h*), by such majorities as aforesaid approving of such application, and such application shall, upon the allowance of such resolution by the Commissioners under their seal, be deemed to have been lawfully made under the provisions of this Act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And the provisions in this Act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this Act, been laid out in the purchase of land.

Deposit of orders.

5. Copies of all orders made by the Commissioners under this Act shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845, directed to be deposited and kept (*i*).

Exception of the New Forest.

6. This Act shall not extend to the New Forest (*j*).

SCHEDULE.

Situation of Land.	Local Authority.
Within the metropolis . . .	The Metropolitan Board of Works.
Not within the metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any Act amending the same.	The urban sanitary authority.
Elsewhere than within the metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish.

s. 14; 20 & 21 Vict. c. 31, ss. 12, 13; 42 & 43 Vict. c. 37. See also the Commons Act, 1876, *ante*, p. 1627, especially ss. 7, 12, 22—29.

(*g*) See the Acts enumerated in the last preceding note.

(*h*) The Act does not provide any method of calling a meeting. See s. 2, *ante*.

(*i*) See 8 & 9 Vict. c. 118, s. 146; 15 & 16 Vict. c. 79, s. 27.

(*j*) See 8 & 9 Vict. c. 118, s. 13.

THE BATHS AND WASHHOUSES ACT, 1882.

(45 & 46 VICT. c. 30.) (*k*)

An Act to amend the Baths and Washhouses Acts. [24th July 1882.]

1. This Act may be cited for all purposes as "The Baths and Washhouses Act, 1882," and shall be read as one with the Act of the ninth and tenth years of the reign of her present Majesty, chapter seventy-four, in this Act called "the principal Act." Short title.

2. Section twenty-seven of the principal Act (*l*) shall be amended by the addition of the words "or in the immediate neighbourhood of such borough or parish" to the words "in any such borough or parish" wherever such last-mentioned words occur in the said section. Amendment of 9 & 10 Vict. c. 74, s. 27.

3. The power conferred by section twenty-four of the principal Act to purchase or rent lands for the purposes of that Act shall extend to lands in the immediate neighbourhood of such borough or parish as is therein referred to. Amendment of 9 & 10 Vict. c. 74, s. 24.

THE MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 VICT. c. 50.) (*m*)

An Act for consolidating, with amendments, enactments relating to Municipal Corporations in England and Wales. [18th August 1882.]

PART I.

PRELIMINARY.

1. This Act may be cited as the Municipal Corporations Act, 1882. Short title.

2. This Act is divided into Parts, as follows: Division of Act into Parts.

Part I.—Preliminary.
Part II.—Constitution and government of borough.
Part III.—Preparations for and procedure at elections.
Part IV.—Corrupt practices and election petitions.
Part V.—Corporate property and liabilities.
Part VI.—Charitable and other trusts and powers.
Part VII.—Borough fund: borough rate: county rate.
Part VIII.—Administration of justice.
Part IX.—Police.
Part X.—Freemen.
Part XI.—Grant of charters.
Part XII.—Legal proceedings.
Part XIII.—General.

(*k*) See the Baths and Washhouses Acts, 1846, *ante*, p. 1372, 1847, *ante*, p. 1438, 1878, *ante*, p. 1669, 1899, *post*, p. 1948. The preamble to this Act is repealed by the S. L. R. A., 1898. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*l*) *Ante*, p. 1379.

(*m*) A large portion of this Act has been applied with adaptations by the L. G. A., 1894, *ante*, p. 975, to the district councils of urban districts not being boroughs to which this Act of itself applies, and to rural district councils. Certain portions have also a close connection with some of the enactments set out in the body of this Work so far as those enactments apply to the councils of boroughs to which this Act applies in respect of their functions as sanitary authorities. All these portions of the Act have been more or less fully referred to in the notes to those enactments, including the L. G. A., 1894. It seems, therefore, unnecessary, and would also for want of space be almost impossible, to set out

Extent.

3. This Act shall not extend to Scotland or Ireland.

4. [*Commencement*, 31*st December*, 1882.]

5. [*Repeals*.]

Application.

6. This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporations Acts are under this Act extended by charter, but to no other place.

Interpretation and construction.

7.—(1) In this Act—

"Municipal corporation" means the body corporate constituted by the incorporation of the inhabitants of a borough:

"Municipal Corporations Act, 1835," means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September one thousand eight hundred and thirty-five:

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act:

"Burgess" includes citizen:

"Corporate seal" means the common seal of a municipal corporation:

"Corporate office" means the office of mayor, alderman, councillor, elective auditor . . . (*n*):

"Corporate land" means land belonging to or held in trust for a municipal corporation:

"Municipal election" means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large:

"Parliamentary election" means an election of a member to serve in Parliament:

"Parish" means any place for which a separate poor rate is or can be made (*o*):

"Overseers" means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers:

"County" does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county:

"Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

. . . . .

in full all parts of this Act having a bearing upon the subject of this Work. Accordingly only such parts are herein set out as have not already been sufficiently referred to.

For purposes of convenience a list is here subjoined of the sections already sufficiently referred to as above stated:

Section 11, *ante*, p. 994, note (*d*); s. 12, *ante*, p. 994, note (*d*), and p. 1024, note (*a*); ss. 25—27, *ante*, p. 540, note (*a*) to s. 246 of the P. H. A., 1875; ss. 34, 35, *ante*, p. 1035, note (*b*); s. 37, *ante*, p. 1035, note (*d*); s. 39, *ante*, p. 1031, note, and note to s. 46 (6) of the L. G. A., 1894; s. 40, *ante*, p. 1035, note (*e*); s. 56, *ante*, p. 1035, note (*f*); s. 62, *ante*, p. 540, note (*a*) to s. 246 of the P. H. A., 1875; s. 63, *ante*, p. 1021, note to s. 43 of the L. G. A., 1894; ss. 74, 75, *ante*, p. 1034, notes to s. 48 (3) of the L. G. A., 1894.

The preamble to this Act and s. 4 are repealed by the S. L. R. A., 1898. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*n*) Revising assessors, who were also here originally included, are now abolished by 51 & 52 Vict. c. 10, s. 4.

(*o*) See 52 & 53 Vict. c. 63, s. 5.

"Justice" means one of her Majesty's justices of the peace:

"Borough civil court" means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court:

"Schedule" means Schedule to this Act, and "Part" means Part of this Act:

. . . . .

(2) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4) The Schedules shall be read and have effect as if they were part of this Act.

PART II.

Constitution and Government of Borough (*p*).

* * * * *

Byelaws (*q*).

23.—(1) The council may, from time to time, make such byelaws as to them seem meet for the good rule and government of the borough (*r*), and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same. Power of council to make byelaws.

(2) Such a byelaw shall not be made unless at least two-thirds of the whole number of the council are present.

(3) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.

(4) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of her Privy Council, disallows the byelaw or part thereof, the byelaw or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the byelaw shall not come into force, and in that case the byelaw shall not come into force until after the expiration of that enlarged time.

(5) Any offence against such a byelaw may be prosecuted summarily (*s*).

(6) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875 (*t*); and that 38 & 39 Vict. c. 55.

(*p*) By s. 15 of the Interpretation Act, 1889, the expression "borough" when used in relation to local government means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities, or property of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council.

(*q*) See ss. 182—188 inclusive of the P. H. A., 1875, *ante*, p. 431. See also s. 341 of that Act, *ante*, p. 662.

(*r*) See particularly ss. 47, 50, 171 of the P. H. A., 1875, *ante*, pp. 114, 117, 392.

(*s*) But the council cannot summon offenders before them to answer complaints of offences against the byelaws (*Wiseman* v. *Manchester Corporation* (1887), 3 T. L. R. 12).

(*t*) See this section, *ante*, p. 445.

section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.

Evidence of byelaws.

24. The production of a written copy of a byelaw made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the byelaw, and, if it is so stated in the copy, of the byelaw having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the byelaw (*u*).

* * * * *

PART IV. (*x*).

CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices.

Definitions.

77. In this Part—

"Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections (*y*):

. . . .

"Candidate" means a person elected, or having been nominated (*z*), or having declared himself a candidate for election, to a corporate office:

. . .

"Voter" means a burgess or a person who votes or claims to vote at a municipal election:

"Election court" means a court constituted under this Part for the trial of an election petition:

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election:

(*u*) See s. 186 of the P. H. A., 1875, *ante*, p. 444, and *Drew* v. *Harlow*, *ante*, p. 445. Upon a proceeding before a court of summary jurisdiction to recover a penalty for a breach of a byelaw under this section, the production of a written copy of the byelaw authenticated by the corporate seal is sufficient evidence until the contrary is proved, not merely that the byelaw has been duly made, but also that all conditions precedent to its becoming a valid operative byelaw, such as the fixing of a copy of the byelaw for forty days on the town hall before it can come into force, have been complied with (*Robinson* v. *Gregory*, [1905] 1 K. B. 534; 69 J. P. 161). A copy of the byelaws of a county council having a copy of the corporate seal of the council printed upon it is not sufficient evidence of the byelaws, which must be proved by production of a copy sealed with the corporate seal of the council (*Timothy* v. *Fenn* (1910), 74 J. P. 123; 102 L. T. 283).

(*x*) It is necessary to include this Part in the present Work, as by s. 48 (3) of the L. G. A., 1894, *ante*, p. 1033, it now applies to elections of urban district councillors for districts not being boroughs and of rural district councillors. The rules made under this Act are also appended.

(*y*) See the definition of these offences, in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, Sched. III., *post*, p. 1784.

(*z*) Although in fact disqualified for election (*Harford* v. *Lynskey*, [1899] 1 Q. B. 852; 63 J. P. 263).

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868: 31 & 32 Vict. c. 125.

"Prescribed" means prescribed by general rules made under this Part:

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates (*a*).

* * * * *

Avoidance of election for general corruption.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

* * * * *

Striking off votes.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny (*b*).

Personation.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election (*c*).

Election Petitions.

Power to question municipal election by petition.

87.—(1) A municipal election may be questioned by an election petition on the ground—

(a) That the election was as to the borough or ward wholly avoided by general bribery (*d*), treating (*e*), undue influence, or personation; or

(b) That the election was avoided by corrupt practices or offences against this Part committed at the election; or

(c) That the person whose election is questioned was at the time of the election disqualified (*f*); or

(d) That he was not duly elected by a majority of lawful votes (*g*).

(*a*) For the application of these definitions to elections of urban district councillors for districts not being boroughs and of rural district councillors, see the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 36, *post*, p. 1782, and the L. G. A., 1894, s. 48 (3), *ante*, p. 1033.

(*b*) As to the striking off of the votes of persons guilty of illegal practices or payments, see the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 22, *post*, p. 1775.

(*c*) See ss. 85—89 of the Parliamentary Registration Act, 1843, and s. 24 of the Ballot Act, 1872.

(*d*) A single case of bribery avoids an election (*Norwich Election Petition* (1886), 54 L. T. 625). To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery (*Packard* v. *Collings* (1886), 54 L. T. 619).

(*e*) "Treating" is not the entertainment of equals by equals, but of an inferior by a superior with the object of securing the goodwill of the inferior (*Norwich Election Petition*, *supra*).

(*f*) At an election of councillors in a borough the returning officer does not decide upon the qualification of the candidate; that can only be done by petition under this section (*Pritchard* v. *Bangor Corporation* (1888), 13 App. Cas. 241; 52 J. P. 564). The disqualification here mentioned is one which existed at the time of the election. If a person becomes disqualified after election the proper remedy is by *quo warranto* (*Howes* v. *Turner* (1876), 1 C. P. D. 670; 40 J. P. 680. See also *R.* v. *Beer*, *post*, p. 1710).

(*g*) An election may also be questioned for illegal practices. See the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 25, *post*, p. 1776. A petition may be presented under this section against some only of the persons returned, though the ground of the petition is one affecting the validity of the election as a whole; and the court can in such petition declare the persons so petitioned against not to have been duly elected (*Line* v. *Warren* (1884), 14 Q. B. D. 548; 49 J. P. 516).

A petition presented under sub-s. (1) (d) involves a scrutiny. Where a returning officer improperly allowed an objection to a nomination, it was held that a petition would lie under this head, for if the nomination had not been rejected, the votes might have been differently given (*Budge* v. *Andrews* (1877), 3 C. P. D. 510). And a writ of prohibition or *mandamus* does not lie for the purpose of determining whether a returning officer has wrongly and illegally rejected the nomination paper of a candidate for a municipal election. The proper mode of determining this question is by petition (*R.* (*O'Lehane*) v. *Dublin*

(2) A municipal election shall not be questioned on any of those grounds except by an election petition (*h*).

Presentation of petition.

88.—(1) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election (*i*).

(2) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition (*k*).

(3) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer (*l*) shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4) It shall be presented within twenty-one days after the day on which the election was held (*m*), except that if it complains of the election on the

Town Clerk (1909), 43 Ir. L. T. 169). If an elector having notice or knowledge of the disqualification of a candidate wilfully votes for him, his vote is thrown away, but knowledge of the fact which creates a legal disqualification does not involve knowledge that the candidate is legally disqualified. In the case of *Beresford Hope* v. *Lady Sandhurst* (1889), 23 Q. B. D. 79; 53 J. P. 805, it was held that votes given for a woman at a county council election were thrown away. Votes given in favour of a candidate before the voters have notice of any facts disqualifying him for election cannot be treated by the returning officer as thrown away, and unless notice of disqualification has been given the candidate who obtains the minority cannot on petition claim the seat (*Hobbs* v. *Morey*, [1904] 1 K. B. 74; 68 J. P. 132). In *Boyce* v. *White* (1905), 92 L. T. 240; 53 W. R. 430, the petitioner and respondent were the only candidates for the office of town councillor. Both were nominated, but the respondent at the time of his nomination was absent from the United Kingdom, and no written consent by him to such nomination given one month before such nomination was ever produced. The petitioner was not aware of this fact till the day of the poll, when it was too late to print and circulate in the constituency a notice of the objection to the respondent's nomination. The respondent was declared elected. On petition it was held that the court could only declare the election void and not that the petitioner was elected.

(*h*) Where this section applies there is no remedy by *quo warranto* (*R.* v. *Morton*, [1892] 1 Q. B. 39; 56 J. P. 105; and see *R.* v. *Miles; Ex parte Cole* (1895), 64 L. J. Q. B. 420; 59 J. P. 407). But a bankrupt although disqualified by s. 32 of the Bankruptcy Act, 1883, may, notwithstanding the text, still be ousted from holding or exercising office by means of a *quo warranto* (*R.* v. *Beer*, [1903] 2 K. B. 693; 67 J. P. 326). There must be the clearest evidence against a relator of *animus* on his part or acquiescence in a member acting while disqualified to make such objections good ground for the exercise of the discretion of the court in refusing to grant a writ of *quo warranto* to such a relator (*R.* (*McCowen*) v. *Kelleher* (1909), 43 Ir. L. T. 270).

(*i*) If duly nominated a person may petition although in fact disqualified for election and nomination (*Harford* v. *Lynskey*, *ante*, p. 1708).

(*k*) An unsuccessful candidate at an election cannot be made a respondent to a petition, although he coalesced for the purposes of the election with two successful candidates, so as to be responsible equally with them for any acts done by any of the three in furtherance of the common purpose (*Lovering* v. *Dawson* (1875), L. R. 10 C. P. 726).

At a municipal election A. and B. were candidates for the office of councillor. A. obtained a majority of votes over B., and was declared elected, but refused to serve. B. thereupon claimed to have been elected, and having made the necessary declaration, acted on several occasions as councillor. A petition was presented against both A. and B., and both of them gave notice of their intention not to oppose the petition. No notice of A.'s disqualification was given to the electors. On an application by B. to the court that his name might be struck out of the petition, the court refused the application, holding that he was properly made a respondent (*Yates* v. *Leach* (1874), L. R. 9 C. P. 605). As to making the returning officer a respondent, see *Harmon* v. *Park* (1880), 6 Q. B. D. 323; 45 J. P. 436; *Wilson* v. *Ingham* (1895), 64 L. J. Q. B. 775; 59 J. P. 611; *Cirencester*, Day's El. Cas. 3.

(*l*) Prescribed here means prescribed by general rules made under this Part (ss. 77, 100); and see the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 34, *post*, p. 1782.

(*m*) The *premature* presentation of a petition does not nullify the petition, but is an irregularity which is capable of being waived by the person raising the objection (*Re Grangemellon Election Petition*, [1909] 2 I. R. 90).

ground of corrupt practices (*n*), and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

89.—(1) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent. Security for costs.

(2) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner (*o*), either by a deposit of money, or by recognizance entered into by not more than four sureties, or partly in one way and partly in the other.

(3) Within five days after the presentation of the petition the petitioner shall in the prescribed manner (*o*) serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4) Within five days after service of the notice the respondent may object in writing to any recognizance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

(5) An objection to a recognizance shall be decided in the prescribed manner (*p*).

(6) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognizance of the matter, make the security sufficient.

(7) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

90. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue. Petition at issue.

91.—(1) The prescribed officer (*q*) shall as soon as may be make a list, in this Act referred to as the municipal election list, of all petitions at issue, Municipal election list.

(*n*) For the corresponding provision as to illegal practices, see the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 25, *post*, p. 1776. That section also provides that any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court, within the time within which a petition complaining of the election on the ground of that illegal practice can, under that section, be presented. The court cannot after the period of twenty-one days here mentioned allow an amendment which would practically amount to a new petition, as by adding a charge of treating (*Clark* v. *Lowley* (1883), 52 L. J. Q. B. 321; 47 J. P. 551).

(*o*) See note (*l*), *ante*, and r. 26, *post*, p. 1722. Security need not be given for more than £500, although there are several respondents (*Pease* v. *Norwood* (1869), L. R. 4 C. P. 235). By r. 36, *post*, p. 1724, the petitioner or his agent must file an affidavit of the time and manner of the service immediately after such service. The observance of these provisions as to service of the petition is a condition precedent to the trial of the petition (*Williams* v. *Tenby Corporation* (1879), 5 C. P. D. 135; 44 J. P. 348).

(*p*) See note (*l*), *ante*. See also rr. 27—35, *post*, p. 1723.

(*q*) See note (*l*), *ante*. As to inspection, see r. 39, *post*, p. 1724.

placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner (*r*).

(2) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition shall be deemed to be a separate petition against each respondent (*s*).

(4) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

Constitution of election court.

92.—(1) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of her Majesty's judges on which he practises as a barrister.

(4) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions . . . (*t*).

(5) If a commissioner to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit (*u*).

Trial of election petitions.

93.—(1) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial (*v*).

(2) The place of trial shall be within the borough (*x*), except that the High Court may, on being satisfied that special circumstances exist rendering it

(*r*) See note (*l*), *ante*, p. 1710. As to inspection, see r. 39, *post*, p. 1724.

(*s*) See *Line* v. *Warren*, *ante*, p. 1709.

(*t*) See the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 36 (2), *post*, p. 1783.

(*u*) The election court is a court of record. See *R.* v. *Maidenhead Corporation*, *post*, p. 1719. Orders under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 28, *post*, p. 1778, cannot be varied under this sub-section. See sub-s. (7) of that section.

(*v*) See rr. 40—43, *post*, p. 1724.

(*x*) That is, the urban district not being a borough, or the rural district. Where the allegations of fact in a petition are not in dispute, but are specifically admitted by the respondent, so as to render it unnecessary at the trial to call witnesses from the district in which the election took place, the court may order the petition to be tried in London, on

desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3) The election court may in its discretion adjourn the trial from time to time (*y*), and from any one place to any other place within the borough or place where it is held.

(4) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows:

(a) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence;

(b) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part;

(c) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof (*z*).

(6) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final (*a*).

(8) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the

the ground that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the county or division where the election took place (*Arch* v. *Bentinck* (1887), 18 Q. B. D. 548). The facts that a scrutiny is the only question to be tried, or that it would be less expensive to try elsewhere, are not "special circumstances" (*Lawson* v. *Master*, [1893] 1 Q. B. 245; 57 J. P. 806; see also *Collins* v. *Price* (1878), 4 C. P. D. 544).

(*y*) See, however, the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 27, *post*, p. 1778.

A formal adjournment is not necessary. See r. 45, *post*, p. 1724.

(*z*) The court must further report as to illegal practices in manner prescribed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 8 (2), *post*, p. 1767. As to the form of the report, see *Grant* v. *Pagham Overseers* (1877), 3 C. P. D. 80; 42 J. P. 88; and as to its exclusive effect, see cases cited in the note to 46 & 47 Vict. c. 51, s. 38, *post*, p. 1787.

(*a*) As to the mode of application, see r. 48, *post*, p. 1725. Notwithstanding this subsection, appeal, if leave be given, lies from a judgment of the King's Bench Division to the Court of Appeal (*Line* v. *Warren*, *ante*, p. 1709; and see *Beresford Hope* v. *Lady Sandhurst*, *ante*, p. 1710). If no leave be given no appeal lies (*Unwin* v. *Macmullen*, [1891] 1 Q. B. 694; 55 J. P. 582; *Shaw* v. *Reckitt*, [1893] 2 Q. B. 59; 57 J. P. 805).

If leave to appeal be refused by the High Court, possibly it may be given by the Court of Appeal under Judicature Act, 1894, s. 1 (5).

High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius (*b*).

(9) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person (*c*).

(11) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

Witnesses.

94.—(1) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and . . . (*d*).

(2) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them (*e*).

. . . . .

(9) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

Withdrawal of petition.

95.—(1) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place (*f*).

(*b*) See *Stepney* (1886), 4 O'M. & H. 36; *Thornbury* (1886), *ibid.* 68; *Isaacson* v. *Durant* (1887), 17 Q. B. D. 54; *Ackers* v. *Howard* (1886), 16 Q. B. D. 739; 50 J. P. 519; *Londonderry* (1886), 4 O'M. & H. 103; *Re Pembroke Election Petition,* [1908] 2 I. R. 433.

(*c*) In this case the respondent must deliver to the Master six days before the day appointed for trial, a list of the objections to the election upon which he intends to rely, and the Master is to allow inspection and office copies of such list to all parties concerned; and no evidence is to be given by the respondent of any objection not specified in the list, except by leave of the High Court. See r. 8, *post*, p. 1721.

(*d*) See also r. 54, *post*, p. 1725. The concluding words of the sub-section were repealed by the Perjury Act, 1911.

(*e*) Sub-sections (5)—(8), inclusive, of this section were repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 38, *post*, p. 1783.

(*f*) See further as to the withdrawal of a petition, the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 26, *post*, p. 1777.

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

96.—(1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners. Abatement of petition.

(2) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly (*g*).

(4) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition (*h*).

The form of notice of application to withdraw a petition is prescribed by r. 58, *post*, p. 1726. The notice of application is to be left at the Master's office, and copies are to be served on the respondent and on the town clerk or clerk of the council, as the case may be, and published in the county or borough to which the petition relates. See rr. 59, 60, *post*, p. 1726.

The petitioners, who had presented a petition and subsequently found out their agent's report upon which the petition was based was untrustworthy, were allowed by the court to withdraw the petition, the Treasury having ascertained by special inquiry that there was no reliable evidence to support it, and having received from the petitioners copies of the reports and details of the subsequent inquiries. On a motion for leave to withdraw a petition, the court has a discretion as to the costs of the parties, and may order them to be paid by the petitioners on the higher scale, and taxed as between solicitor and client. They cannot give costs to the Public Prosecutor (*Pascoe* v. *Puleston* (*Devonport Election Petition*) (1886), 50 J. P. 135; 54 L. T. 733).

After a municipal election a petition was presented by an unsuccessful candidate, claiming that he was returned by a majority of lawful votes. The mayor, to save expense, induced the petitioner and the returned candidate to submit the question to the arbitration of the town clerk, who was to recount the votes. On the award being against the petitioner, he asked leave to withdraw the petition, and the court allowed him to do so on payment of the costs, the Public Prosecutor not opposing (*Mallam* v. *Bean* (1887), 51 J. P. 230; 3 T. L. R. 516). See also *Lichfield Election Petition* (1893), 9 T. L. R. 92; and *Halifax Election Petition* (1893), 9 T. L. R. 563.

(*g*) As to the notice, see rr. 63, 64, *post*, p. 1727.

(*h*) See s. 89, *ante*, p. 1711.

Withdrawal and substitution of respondents.

97.—(1) If before the trial of an election petition a respondent other than a returning officer—

(a) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(b) Gives the prescribed notice that he does not intend to oppose the petition;

the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three (*i*).

(2) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

Costs on election petitions.

98.—(1) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful (*k*).

(2) The costs may be *taxed in the prescribed manner but according to the same principles as costs between solicitor and client in an action in the High Court, and may be* recovered as the costs of such an action, or as otherwise prescribed (*l*).

(3) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the prescribed officer shall thereon certify the recog-

(*i*) See rr. 64—67, *post*, p. 1727, relating to the prescribed notice, time, etc. The returning officer may be a respondent if the petition complains of his conduct.

A respondent may cease to hold office through disqualification. The name of a respondent will not be struck out of a petition merely because he has given the prescribed notice under this section. See *Yates* v. *Leach*, *ante*, p. 1710.

(*k*) An overloaded petition will be visited with costs, even if it is successful (*Birkbeck* v. *Bullard* (1886), 54 L. T. 625). When a petition is wholly unfounded the court may order the petitioner to pay the costs of the Public Prosecutor (*Crossman* v. *Gent-Davis* (1886), 54 L. T. 628). In certain cases the parties may be ordered to pay the expenses of the election court. See s. 101, *post*, p. 1718.

The barrister appointed to try the petition has an absolute discretion over the costs. In a case where the petitioners had improperly made an unsuccessful candidate a respondent, it was held that they could not object that he was not a party to the petition so as to deprive the barrister of jurisdiction to make an order upon them for his costs (*Lovering* v. *Dawson* (1875), L. R. 10 C. P. 726).

As to the costs on withdrawal of a petition, see *Pascoe* v. *Puleston* (*Devonport Election Petition*), *ante*, p. 1715.

(*l*) So much of this sub-section as relates to the principles of taxation is repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, Sched. II. See now s. 29 (3) of that Act, *post*, p. 1780. As to the mode of taxation and recovery of the costs, see r. 68, *post*, p. 1727, and *Parc* v. *Hartshorn* (1875), 31 L. T. 486; 23 W. R. 138.

rizance to be forfeited, and it shall be dealt with as a forfeited recognizance relating to a parliamentary election petition (*m*).

Reception of and attendance on the election court.

99.—(1) The town clerk (*n*) shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate.

(2) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) The election court may employ officers and clerks as prescribed.

(4) A shorthand writer (*o*) shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

Rules of procedure and jurisdiction.

100.—(1) The judges for the time being on the rota for the trial of parliamentary election petitions may from time to time make, revoke, and alter general rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon (*p*).

(2) All such rules shall be laid before both Houses of Parliament within three weeks after they are made if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction (*q*).

(*m*) The prescribed officer is the Master. See r. 1, *post*, p. 1719. A forfeited recognisance relating to a parliamentary election petition is dealt with in manner provided by the Parliamentary Elections Act, 1868, s. 42.

(*n*) That is, the clerk to the urban district council for a district not being a borough, or the clerk to the rural district council. See the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 36, *post*, p. 1782.

(*o*) See r. 52, *post*, p. 1725.

(*p*) And see also 47 & 48 Vict. c. 70, s. 30, *post*, p. 1780. The rules now in force are set out after this Part of this Act, *post*.

(*q*) The High Court has no power to entertain an appeal against the decision of a commissioner appointed to inquire into alleged corrupt or illegal practices at an election except on points of law reserved for its decision by way of a case stated by the commissioner (*Ex parte Ayres* (1886), 54 L. T. 296). A petition against the election of members of a local board alleged undue influence by the respondents and their agents, and that corrupt and illegal practices extensively prevailed. The commissioner reported to the High Court that no corrupt practice had been proved against the respondents or otherwise, that illegal practices extensively prevailed, and that the respondents had been guilty of illegal

(5) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

Expenses of election court.

101.—(1) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate (*r*).

(2) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk (*s*) for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

(a) When in the opinion of the election court a petition is frivolous and vexatious by the petitioner;

(b) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied (*t*).

practices; and he certified that the respondents had not been duly elected. On a motion for a new trial or a prohibition, on the ground that the commissioner had exceeded his jurisdiction, it was held that the report was not in excess of the jurisdiction. *Quære*, whether the court has jurisdiction to entertain an appeal from a commissioner. *Per* STEPHEN, J.: The jurisdiction, if any, ought only to be exercised under extraordinary circumstances, and when necessary that justice should be done (*Marsland* v. *Heitman* (*Goole Election Petition*) (1885), 2 T. L. R. 398). See also *Preece* v. *Harding*, *post*, p. 1787; *Shaw* v. *Reckitt*, *ante*, p. 1713; *Re Pembroke Election Petition*, [1908] 2 I. R. 433.

(*r*) The expenses will be paid out of the general district rate in cases of petitions against the election of a member of an urban district council for a district not being a borough or of a rural district council. See the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 36, *post*, p. 1782.

(*s*) See note (*n*), *ante*, p. 1717.

(*t*) Upon the trial of a petition against the return of a borough councillor under the Municipal Elections (Corrupt Practices) Act, 1872, the barrister in delivering judgment said that he found the councillor guilty of personal bribery, and that all the costs of the inquiry were to be borne by him, and made an order in writing for the payment by the councillor of certain costs under s. 19 of that Act. The written order made no provision for the remuneration and allowances to the barrister and other persons under s. 22 (corresponding to the text). The Treasury paid the amount of such remuneration and allowances, and certified the payment to the borough treasurer, and required him to repay them the amount out of the borough fund. A rate was accordingly made and levied. The Treasury afterwards, on receiving from the barrister a letter that he had always intended to visit all the costs upon the councillor, and had said so in giving judgment, cancelled their certificate, and the borough corporation abandoned the rate and returned the sums levied to the ratepayers. Afterwards the Treasury, finding that the barrister had made no written order for the payment of remuneration and allowances, issued a fresh certificate requiring the borough treasurer to pay them the amount out of the borough fund or rates. These facts being found upon a return to a *mandamus* commanding the treasurer to repay the Treasury, it was held that no valid order had been made by the barrister for the payment of the remuneration and allowances by the councillor; that the election court was a court of record, and that neither the High Court nor the Court of Appeal on the return could amend the order so as to make it include such payment; that the act of the Treasury in certifying was

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration. Acts done pending a petition not invalidated.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy (*u*); and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness. Provisions as to elections in the room of persons unseated on petition.

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted. Prohibition of disclosure of vote.

GENERAL RULES.

The following is the text of the general rules for the effectual execution of Part IV. of the Municipal Corporations Act, 1882, made by Sir Charles Edward Pollock, Knight; Sir Henry Manisty, Knight; and Sir Henry Charles Lopes, Knight, the judges for the time being on the rota for the trial of parliamentary election petitions:

1. The presentation of a Municipal Election Petition shall be made by leaving it at the office of the Master for the time being nominated as prescribed officer, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt which may be in the following form:

Received on the day of at the Master's office a petition touching the election of *A. B.*, alderman, councillor [etc., *as the case may be*], for the borough of , purporting to be signed by [*insert the name of petitioners*].

C. D., Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 88, sub-section (3) of the Act.

2. A municipal election petition shall contain the following statements:

(1) It shall state the right of the petitioner or petitioners to petition within section 88, sub-section (1), of the Act.

(2) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the High Court or a judge thereof.

4. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, (as the case may be,) and shall be signed by all the petitioners.

not a judicial act, and that they had the power to make a second certificate, and were entitled to a peremptory *mandamus* compelling the treasurer to repay to them the amount of such remuneration and allowances out of the borough fund or rates, and compelling the corporation to order such amount to be levied by a borough rate (*R.* v. *Maidenhead Corporation* (1882), 9 Q. B. D. 494; 46 J. P. 724).

(*u*) In the case of urban district councils for districts not being boroughs or of rural district councils there must be a new election. See the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 36, *post*, p. 1782.

5. The following form, or one to the like effect, shall be sufficient:

In the High Court of Justice,
The Municipal Corporations Act, 1882.
Election for [*state the place and office for which election held*] holden on the day of A.D.
The petition of *A.* of [*or* of *A.* of , and *B.* of , *as the case may be*] whose names are subscribed.

1. Your petitioner *A.* is a person who voted [*or* had a right to vote, *as the case may be,*] at the above election [*or* was a candidate at the above election]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].
2. And your petitioners state that the election was holden on the day of A.D. , when *A. B.*, *C. D.*, and *E. F.* were candidates, and that *A. B.* and *C. D.* have been in the usual manner declared to be duly elected.
3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A. B.* was not duly elected, and that the election was void [*or* that the said *E. F.* was duly elected, and ought to have been returned, *or as the case may be*].

(Signed)
A.
B.

6. Evidence need not be stated in the petition, but the High Court or a judge thereof may order such particulars (*x*) as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the said High Court, and upon such terms as to costs and otherwise as may be ordered.

7. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the Master and also at the address, if any given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered (*y*).

(*x*) An order for particulars of the corrupt practices alleged in a municipal election petition was made at chambers in the following form: That the petitioners do within a week deliver to the respondents particulars of all the persons alleged to have been bribed or treated, by whom, and when and where; and of all persons alleged to have been retained or employed as canvassers and by whom, and when and where; and of all persons to whom money was paid or agreed to be paid on account of the conveyance of voters to the poll, and by whom, and when and where such moneys were paid or agreed to be paid (*Maude* v. *Lowley* (1874), L. R. 9 C. P. 165; 38 J. P. 280). Where a judge in chambers ordered a petitioner to furnish particulars of his charges against the respondent ten clear days before the hearing of the petition, the Divisional Court refused to interfere with the order (*Barrow-in-Furness Election Petition* (1885), 2 T. L. R. 356). The ordinary time for delivery of particulars is seven days before the trial (*Lenham* v. *Barber* (1884), 10 Q. B. D. 293; 48 J. P. 23). See also *Clarke* v. *Wallond* (1884), 52 L. J. Q. B. 321. But this is not a hard and fast rule, and in determining whether there are special circumstances upon which it will act in extending the time the court will take into consideration the size and nature of the constituency, the population and the number of voters, and also the number of witnesses whom it is proposed to call (*Rushmere* v. *Isaacson*, [1893] 1 Q. B. 118; 57 J. P. 790). The respondent to a petition in which the seat is claimed upon a scrutiny is not entitled to obtain particulars under this rule, but r. 7 applies exclusively to such a case (*Munro* v. *Balfour*, [1893] 1 Q. B. 113; 57 J. P. 789; *Furness* v. *Beresford*, [1898] 1 Q. B. 495).

(*y*) The trial of a municipal election petition was appointed for January 20th. A list of objections was tendered at the Rule Office of the Common Pleas on January 13th, and refused on the ground that it was too late, and it was taken away by the person tendering it. On the 14th a list of objections was left at the Rule Office, and one was also delivered to the respondent:—*Held*, that the list was not delivered in due time according to the rule, and that the court had no jurisdiction to order delivery *nunc pro tunc* under the last clause of the rule (*Nield* v. *Batty* (1874), L. R. 9 C. P. 104; 38 J. P. 264).

8. When the respondent in a petition under the Act complaining of an undue election and claiming the office for some person, intends to give evidence to prove that the election of such party was undue, pursuant to the 93rd section of the Act, sub-section (10), such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such list to all parties concerned ; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

9. With the petition the petitioner or petitioners shall leave at the office of the Master a writing, signed by him or them or on his or their behalf, giving the name of some person entitled to practise as a solicitor in the High Court of Justice, whom he or they authorise to act as his or their agent, or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address, within three miles of the General Post Office, at which notices addressed to him or them may be left ; and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

10. Any person elected to any municipal office may at any time after he is elected send to or leave at the office of the Master a writing signed by him or on his behalf, appointing a person entitled to practise as a solicitor in the High Court of Justice, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

11. The Master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The Master shall upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 88 of the Act, sub-section (3), and shall therewith send the name of the petitioner's agent, if any, and the address, if any, given as prescribed, and also the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge of the High Court, on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

15. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the

prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Municipal Corporations Act, 1882, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's office.

17. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. All claims at law or in equity to money so deposited or to be deposited in the Bank of England shall be disposed of by the High Court of Justice or a judge thereof.

19. Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the High Court, or order of a judge thereof.

20. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the court or judge may require.

21. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

22. Upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice of England for the time being.

23. The draft of the Lord Chief Justice of England for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

24. The recognizance as security for costs may be acknowledged before a judge of the High Court or the Master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

25. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:

Be it remembered that on the day of , in the year of our Lord, 18 , before me [*name and description*] came *A. B.*, of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [*or* the following sums], (that is to say) the said *C. D.* the sum of £ , the said *E. F.* the sum of £ , the said *G. H.* the sum of £ , and the said *J. K.* the sum of , to be levied on his [*or* their respective] goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one, add* or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [*or* them] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or* petitioners, or any of them] under the Municipal Corporations Act, 1882, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

[*Signatures of sureties.*]

Taken and acknowledged by the above-named [*names of sureties*] on the at , before me,

C. D.

A justice of the peace [*or as the case may be*].

26. The recognizance or recognizances shall be left at the Master's office, by or on behalf of the petitioner, in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

The security may (unless the High Court or a judge thereof shall otherwise order on summons) be given to any amount not less than £300 ; but the High Court or a judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order that the same shall be increased within a time to be fixed in the order by further security to be given in the manner directed by the Act, for a further amount, not exceeding with the amount for which security shall have been already given £500. And in default of compliance with such order, no further proceedings shall be had on the petition.

27. The time for giving notice of any objection to a recognizance under the 89th section of the Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or in case of further security within five days after service of notice of the nature thereof, exclusive of the day of such service.

28. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

29. An objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

30. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or judge may think fit.

31. If an objection be allowed and the security be declared insufficient, the Master or judge shall in his order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

32. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or judge, and in default of such order shall form part of the general costs of the petition.

33. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorised to take, or before some person authorised to take affidavits in the High Court of Justice that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows :

In the High Court of Justice.

Municipal Corporations Act, 1882.

I, *A. B.*, of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts, of the clear value of £ .

Sworn, *etc.*

34. The order of the Master for payment of costs shall have the same force as an order made by a judge, and may be enforced in like manner as a judge's order in an ordinary proceeding in the High Court of Justice.

35. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the registrar, stamped with the official seal. Such order shall be filed by the party obtaining the same, and such particular by the party delivering the same.

36. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof (*z*).

37. The days mentioned in Rules 7 and 8, and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

38. When the last day for presenting petitions, or filing lists of votes or objections, under Rules 7 and 8, or recognizances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

39. The Master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

40. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

41. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

42. The notice of trial may be in the following form:

Municipal Corporations Act, 1882.

Election petition of .

Borough of .

Take notice that the above petition [*or* petitions] will be tried at on the day of , and on such other subsequent days as may be needful.

Dated the .

Signed, by order,

A. B.,

The Master appointed under the above Act.

43. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

44. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

45. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

(*z*) See *Williams* v. *Tenby Corporation*, *ante*, p. 1711.

46. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 97th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

47. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the High Court of Justice, or a judge, may either declare the election void or direct the trial to proceed (*a*). Notice of such order shall be forthwith given by the Master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order.

The court or judge may also make such order as to costs as may be just.

48. The application to state a special case may be made by motion in the High Court of Justice, or by a summons before a judge thereof.

49. The title of the court held for the trial of a municipal election petition, may be as follows:

"Court for the trial of a municipal election petition for the borough of [*or* as may be] between the petitioner and respondent,"

and it shall be sufficient so to entitle all proceedings in that court.

50. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

51. The Commissioner may appoint a proper person to act as crier and officer of the court.

52. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

53. The amount to be paid to any witness whose expenses shall be allowed by the Commissioner trying the petition shall be ascertained and certified by the registrar; or in the event of his becoming incapacitated from giving such certificate, by the Commissioner.

54. The order of the court to compel the attendance of a person as a witness may be in the following form:

Court for the trial of a municipal election petition for [*complete the title of the court*] the day of .

To *A. B.* [*describe the person*]. You are hereby required to attend before the court above at [*place*] on day of , at the hour of [*or* forthwith, *as the case may be*], to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand, *A. B.*,
The Commissioner to whom the trial of the said petition is assigned.

55. In the event of its being necessary to commit any person for contempt, the warrant may be as follows:

At a court holden on at for the trial of a municipal election petition for the borough of before *A. B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to the Municipal Corporations Act, 1882.

Whereas *C. D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C. D.* for his said

(*a*) See *Re Linthwaite School Board Election, Lockwood* v. *Whittell* (1899), 43 Sol. J. 532, where the election was declared void.

contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C. D.* may be found, shall take the said *C. D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler, thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C. D.* into his custody, and that he shall be retained in the said gaol in pursuance of the said sentence.

A. B.

Signed the day of .

A. B.

56. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the High Court as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant may be sufficient without further particularity, and shall and may be executed by the person to whom it is directed or any or either of them.

57. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Municipal Corporations Act, 1882, as a judge in the ordinary proceedings of the High Court, and such questions and matters shall be heard and disposed of by any judge of the High Court.

58. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :

Municipal Corporations Act, 1882.

Borough of Petition of [*state petitioners*] presented day of .

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of .

(Signed)

59. The notice of application for leave to withdraw shall be left at the Master's office.

60. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall cause the same to be published in the borough to which it relates.

The following may be the form of such notice :

Municipal Corporations Act, 1882.

In the election petition for in which is petitioner and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the Master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice, that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

61. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application if in fact made at the hearing.

62. The time and place for hearing the application shall be fixed by a judge, and whether before the High Court, or before a judge, as he may deem

advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the court or judge directs.

63. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 96, sub-section (1) of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the High Court, or a judge thereof, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the High Court or a judge thereof may allow.

64. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

65. The manner of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Master signed by the respondent.

66. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

67. The time for applying to be admitted as a respondent in either of the events mentioned in the 97th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the High Court or a judge thereof may allow.

68. Costs shall be taxed by the Master, or at his request by any Master of the superior court upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered in like manner as if payable under a rule of court, judgment, or order of a judge in the ordinary proceedings in the High Court of Justice, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the Lord Chief Justice of England for the time being.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

69. No proceedings under the Municipal Corporations Act, 1882, shall be defeated by any formal objection.

70. Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up at the Master's office.

Dated the 17th day of April, 1883.

C. E. Pollock,
H. Manisty,
Henry C. Lopes,
The judges for the time being on the rota for the trial of parliamentary election petitions.

PART V.

Corporate Property and Liabilities.

* * * * *

Working Men's Dwellings (*b*).

Working Men's Dwellings.

Sites for working men's dwellings.

111.—(1) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the

(*b*) See the Housing of the Working Classes Acts, 1890 and 1894, *ante*, pp. 869, 1070, and particularly s. 91 of the former Act, *ante*, p. 928.

Treasury (*c*) for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land (*d*).

(2) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury (*c*) approve.

(3) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease (*d*).

(4) Every such provision shall be valid in law to all intents, and binding on the parties.

(5) All costs and expenses incurred or authorised by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under this Part.

(6) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families ; but the use of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

* * * * *

Borough Bridges.

Borough Bridges. — Maintenance of borough bridges.

119.—(1) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council (*e*).

(2) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge (*f*), but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

(4) The council, with the consent of the Treasury (*c*), may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed (*g*).

* * * * *

(*c*) Now the L. G. B. See the L. G. A., 1888, s. 72.

(*d*) See forms of grants, leases and transfers in the Eighth Schedule, Forms L., M., N., and O., *post*, pp. 1732—1734. It will be remembered that s. 14 of the Conveyancing and Law of Property Act, 1881, affords relief against forfeiture in certain cases. As to notices under that section, see *Pannell* v. *City of London Brewery Co.*, [1900] 1 Ch. 496.

(*e*) Such a bridge is a street within the definition contained in s. 4 of the P. H. A., 1875, *ante*, p. 15.

(*f*) Transferred to county councils by s. 3 (viii) of the L. G. A., 1888, and see the Highways and Bridges Act, 1891, *post*, p. 1861. See also note (*e*) on p. 269, *ante*.

(*g*) See forms of mortgage and transfer in the Eighth Schedule, Forms P. and Q., *post*, p. 1734.

PART VI.

CHARITABLE AND OTHER TRUSTS AND POWERS.

* * * * *

Local Acts.

Local Acts.

Transfer of powers of local authorities to municipal corporations.

136.—(1) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving, a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act.

(2) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom (*h*).

Power for council to extend local lighting Act.

137.—(1) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorised to be levied for lighting.

(2) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough (*i*).

Exercise of powers under local Acts.

5 & 6 Will. 4, c. 76.

138. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature (*k*), if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

(*h*) See also ss. 10 and 310 of the P. H. A., 1875, *ante*, pp. 41, 647.
(*i*) See ss. 161—163 of the P. H. A., 1875, *ante*, pp. 362—367.
(*k*) *E.g.*, the regulation of the fees of a local Court of Requests (*Palmer* v. *Powell* (1840), 6 M. & W. 627).

PART VII.

BOROUGH FUND: BOROUGH RATE: COUNTY RATE

Borough Fund.

Borough Fund.

* * * * *

Application of surplus of borough fund.

143.—(1) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act (*l*), or otherwise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough (*m*).

(2) If the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, before or after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act, 1875, or any Act thereby repealed.

* * * * *

PART XIII.

GENERAL.

* * * * *

Time

Time.

Computation of time.

230.—(1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

Distance.

Distance.

Measurement of distances.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey (*n*).

(*l*) That is, by s. 140, and the Fifth Schedule.

(*m*) *E.g.*, free passage over a footbridge (*Newcastle-upon-Tyne Corporation* v. *Att.-Gen.*, [1892] A. C. 568; 56 J. P. 836). But not contributions to a university college established within the borough (*Att.-Gen.* v. *Cardiff Corporation*, [1894] 2 Ch. 337).

(*n*) See the Interpretation Act, 1889, s. 34; and see *Wright* v. *Wallasey L. B.*, *ante*, p. 1442.

Notices.

Notices.

Notices on town hall.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

Inspection and Copies.

Inspection and copies.

Inspection of documents.

233.—(1) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom (*o*).

(2) A burgess may make a copy of or take an extract from an order of the council for the payment of money.

(3) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(5) The freemen's roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

(6) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7) If a person having the custody of any document in this section mentioned,—

(a) Obstructs any person authorised to inspect the same in making such inspection thereof as in this section mentioned; or

(b) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds (*p*).

* * * * *

Forms.

Forms.

Forms in Schedule.

240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

* * * * *

Substitution in former Acts.

Substitution in former Acts.

Provision for references in unrepealed enactments to 5 & 6 Will. 4, c. 76, etc.

242.—(1) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provisions of the Municipal

(*o*) A burgess is entitled to inspect the minutes of all acts of committees submitted to the council whether these acts are finally approved or not (*Williams* v. *Manchester Corporation* (1897), 45 W. R. 412. And see *Morris* v. *Clarke* (1911), 75 J. P. N. 281).

(*p*) A town council is not entitled to pass a resolution directing their clerk not to show a document which has been read at a meeting of the council to one of the councillors who bonâ fide desires to see it, merely because he may make some use of the information he may obtain from the document in a manner antagonistic to the policy of the majority of the council (*R.* v. *Southwold Corporation, Ex parte Wrightson* (1907), 71 J. P. 351; 97 L. T. 431).

Corporations Act, 1835, in that part mentioned in connection therewith, such provision of this Act as is also mentioned in connection therewith.

(3) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

* * * * *

THE EIGHTH SCHEDULE.

FORMS (*q*).

* * * * *

PART III.

Forms relating to Working Men's Dwellings (*r*).

FORM L.

FORM OF GRANT BY CORPORATION.

The Municipal Corporations Act, 1882.
(Working Men's Dwellings.)

Borough of . Grant No. .

The mayor, aldermen, and burgesses of the borough of , by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to them by *A. B.*, of hereby grant to the said *A. B.* (herein referred to as the grantee), and his heirs, the site following (that is to say) [*insert description*], with the appurtenances, subject to the following conditions (that is to say):

1. The grantee shall build on the site one working man's or working men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, numbered , and under the superintendence and to the satisfaction of the corporation.

2. The grantee, his heirs and assigns, shall always maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and, in case of the taking down or destruction of the building, shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and perform any stipulation of this grant, the corporation may, if they think fit, declare that the site is re-vested in the corporation; and thereupon the same, with the dwelling and other buildings thereon, shall become and be vested in the corporation, as if this grant had not been made.

In witness whereof, etc., this day of , 187 .

(*Corporate Seal.*)

(*q*) See s. 240, *ante*, p. 1732.
(*r*) See s. 111, *ante*, p. 1727.

Form M.

Form of Transfer of Grant.

The Municipal Corporations Act, 1882.
(Working Men's Dwellings.)

Borough of . Transfer No. . (Grant No. .)

A. B. of by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C. D.*, of , hereby grants and transfers to the said *C. D.* and his heirs the site comprised in the within-written * grant [*or* the grant No. under the said Act, dated the day of , 187 †] with the appurtenances and with the dwelling and other buildings thereon, subject to the conditions on which that site is held immediately before the execution of this transfer.

In witness whereof, etc., this day of , 18 .

A. B. (L.S.)

* In case of transfer by indorsement.
† In case of transfer by separate deed.

Form N.

Form of Lease by Corporation.

The Municipal Corporations Act, 1882.
(Working Men's Dwellings.)

Borough of . Lease No. .

The mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A. B.* of and of the rent and stipulations in this lease reserved and contained, and to be by him, his executors, administrators, or assigns, paid and performed, hereby lease to the said *A. B.* (herein referred to as the lessee), his executors and administrators, the site following (that is to say) [*insert description*] with the appurtenances, for the term of [*nine hundred and ninety-nine*] years from the day of , at the yearly rent (clear of all deductions) of , payable by two equal half-yearly payments on the day of and the day of in every year, the first thereof to be made on the day of , and the last thereof to be made in advance on the day of next before the end of the term, and so that on the term being determined by re-entry a proportionate part of the rent for the fraction of the current half year up to re-entry be repayable.

And the lessee hereby covenants with the corporation that he, his executors, administrators, or assigns, will during the term pay the rent on the days and in manner aforesaid, and will pay all taxes, rates, and outgoings for the time being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say):

1. The lessee shall build on the site one working man's or working men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, and numbered , under the superintendence and to the satisfaction of the corporation.

2. The lessee, his executors, administrators, and assigns, shall always during the term maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and in case of the taking down or destruction of the building, shall not rebuild it, except in manner approved by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

In witness whereof, etc., this day of , 187 .

(*Corporate Seal.*)
A. B. (L.S.)

FORM O.

FORM OF ASSIGNMENT OF LEASE.

The Municipal Corporations Act, 1882.
(Working Men's Dwellings.)

Borough of . Transfer No. . Lease No. .

A. B. of (herein referred to as the assignor) by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C. D.* of , hereby assigns to the said *C. D.* (herein referred to as the assignee), his executors and administrators, the site comprised in the within-written lease * [*or* the lease No. under the said Act, dated the day of 187 †], with the appurtenances, and with the dwelling and other buildings thereon, for the residue of the term of years, at the rent and subject to the stipulations and conditions at and subject to which that site is held immediately before the execution of this assignment.

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, etc., this day of , 187 .

A. B. (L.S.)
C. D. (L.S.)

* In case of assignment by indorsement.
† In case of assignment by separate deed.

PART IV.

Forms relating to Borough Bridges (*s*).

FORM P.

FORM OF MORTGAGE.

The Municipal Corporations Act, 1882.
(Borough Bridges.)

Borough of . Mortgage No. .

We, the mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to us by *A. B.* of for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof, until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of at [*place of payment*].

In witness whereof, etc., this day of 187 .

(*Corporate Seal.*)

FORM Q.

FORM OF TRANSFER OF MORTGAGE.

The Municipal Corporations Act, 1882.
(Borough Bridges.)

Borough of . Transfer No. . Mortgage No. .

I *A. B.* of , in consideration of the sum of paid to me by *C. D.* of , do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, dated this day of , and made by the mayor, aldermen, and burgesses of the borough of , under the above-

(*s*) See s. 119, *ante*, p. 1728.

mentioned Act, for securing the sum of and interest thereon at per centum per annum [*or, if the transfer is by indorsement on the mortgage, insert instead of the words immediately following the word* "*assigns*," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, etc., this day of 187 .

A. B. (L.S.)

THE NINTH SCHEDULE.

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED (*t*).

PART I.

General References.

. . . . .

9 & 10 Vict. c. 74.—The Baths and Washhouses Act, 1846 (section 1) (*u*).

. . . . .

20 & 21 Vict. c. 81.—The Burial Act, 1857 (*x*).

. . . . .

26 & 27 Vict. c. 13.—The Town Gardens Protection Act, 1863 (*y*).

. . . . .

33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A.) (*a*).

. . . . .

34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (section 2) (*b*).

. . . . .

35 & 36 Vict. c. 91.—The Borough Funds Act, 1872 (*c*).

. . . . .

38 & 39 Vict. c. 55.—The Public Health Act, 1875 (section 4) (*d*).
38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (section 34) (*e*).
39 & 40 Vict. c. 56.—The Commons Act, 1876 (section 37) (*f*).

. . . . .

41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (section 38) (*g*).

PART II.

Particular References.

14 & 15 Vict. c. 55.—The Criminal Justice Administration Act, 1851 :

In section 24, for Schedule C. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.

33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870 :

In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

(*t*) See s. 242, *ante*, p. 1731.
(*u*) *Ante*, p. 1372.
(*x*) *Ante*, p. 1477.
(*y*) *Ante*, p. 1486.
(*a*) *Ante*, p. 1533.
(*b*) *Ante*, p. 1557.
(*c*) *Ante*, p. 1566.
(*d*) *Ante*, p. 3.
(*e*) *Ante*, p. 1605.
(*f*) *Ante*, p. 1644.
(*g*) *Ante*, p. 1687.

THE ELECTRIC LIGHTING ACT, 1882.

(45 & 46 VICT. c. 56.) (*h*)

An Act to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland. [18th August 1882.]

Short title.

1. This Act may be cited for all purposes as "The Electric Lighting Act, 1882."

Application of Act.

2. The provisions of this Act shall apply to every local authority (*i*), company, or person who may by this Act or any licence or Provisional Order granted under this Act, or by any special Act to be hereafter passed, be authorised to supply electricity within any area (in this Act referred to as "the undertakers") and to every undertaking so authorised, except so far as may be expressly provided by any such special Act; and every such licence, Provisional Order, and special Act, is in this Act included in the expression "licence, Order, or special Act."

Granting of licences authorising the supply of electricity.

3. The Board of Trade may from time to time license any local authority as defined by this Act (*i*), or any company or person, to supply electricity under this Act for any public or private purposes (*k*) within any area (*l*), subject to the following provisions:

(1) The consent of every local authority (*i*) having jurisdiction within the area or any part of the area within which a supply is licensed to be furnished shall be required to the application for a licence, which consent such local authority is hereby authorised to give, with such conditions (if any) as, subject to the approval of the Board of Trade, the local authority may prescribe:

(2) A licence shall be for any period not exceeding seven years, but may, at or after the expiration of such licence, be renewed from time to time for a like period with such consent as above mentioned upon such terms and conditions as the Board of Trade may determine:

(3) "Public purposes" shall mean lighting any street or any place belonging to or subject to the control of the local authority, or any church or registered place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre, but shall not include any other purpose to which electricity may be applied:

(4) "Private purposes" shall include any purposes whatever to which electricity may for the time being be applicable, not being public purposes, except the transmission of any telegram (*m*):

(5) Every local authority, company, or person applying for a licence shall publish notice of their application by public advertisement in such manner and including such particulars as the Board of Trade may

(*h*) This Act is included in this Appendix, as it confers important powers upon urban and rural district councils. It and two amending Acts of 1888, *post*, p. 1806, and 1909, *post*, p. 2113, constitute "The Electric Lighting Acts, 1888 to 1909"; they are supplemented by the Electric Lighting Clauses Act, 1899, *post*, p. 1917.

(*i*) See the definition of this term in s. 31, *post*, p. 1749. It includes urban and rural sanitary authorities. Licences are practically obsolete. It is now usual to apply for a Provisional Order under s. 4.

(*k*) This phrase is explained by sub-ss. (3), (4), *infra*.

(*l*) See *Newcastle-on-Tyne Electric Supply Co., Ltd.* v. *Newcastle-on-Tyne Corporation* (1911), 75 J. P. 97; 9 L. G. R. 161.

(*m*) Defined in s. 32, *post*, p. 1750.

from time to time direct or approve (*n*); and such licence shall not be granted by the Board of Trade until after the expiration of a period of three months from the date of the first publication of such advertisement, nor until opportunity has been given to all parties interested to make representations or objections to the Board of Trade with reference to the application:

(6) No application for a licence shall be made by any local authority except in pursuance of a resolution to be passed at a special meeting of the local authority, and such special meeting shall only be held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given (*o*):

(7) A licence may, subject to the provisions of this Act, be granted to a local authority authorising them to supply electricity within any area although the same or some part thereof may not be included within their own district:

(8) The licence may make such regulations as to the limits within which and the conditions under which a supply of electricity is to be compulsory or permissive, and for enforcing the performance by the licensees of their duties in relation to such supply, and for the revocation of the licence where the licensees fail to perform such duties, and generally may contain such regulations and conditions as the Board of Trade may think expedient:

(9) Where in any area or part of an area in which any undertakers are authorised to supply electricity under any licence the undertakers are not themselves the local authority, the licence may contain any provisions and restrictions for enabling the local authority within whose jurisdiction such area or part of an area may be to exercise any of the powers of the undertakers under this Act with respect to the breaking up of any street repairable by such local authority within such area or part of an area (*p*), and the alteration of the position of any pipes or wires being under such street (*q*), and not being the pipes or wires of the undertakers, on behalf and at the expense of the undertakers, and for limiting the powers and liabilities of the undertakers in relation thereto, which the Board of Trade may think expedient (*r*).

Granting of Provisional Orders authorising the supply of electricity.

4. The Board of Trade may, from time to time, by Provisional Order, authorise any local authority (*s*), company, or person to supply electricity (*t*) for any public or private purposes (*u*) within any area (*x*) *without requiring*

(*n*) See the Rules made by the Board of Trade, *post*, p. 1754.

(*o*) A special meeting of the council of a borough is called pursuant to the Municipal Corporations Act, 1882, Sched. II.; of an urban district council other than a borough council and of a rural district council pursuant to the P. H. A., 1875, Sched. I., *ante*, p. 666, as applied by s. 59 of the L. G. A., 1894, *ante*, p. 1046.

(*p*) See s. 12, *post*, p. 1743.

(*q*) See s. 15, *post*, p. 1744.

(*r*) See also the Electric Lighting Clauses Act, 1899, Sched., r. 16, *post*, p. 1925.

(*s*) Two or more authorities may be empowered to supply jointly in certain cases: see s. 8 of the Electric Lighting Act, 1909, *post*, p. 2116.

(*t*) This does not include the supply of lamps and fittings (*Leicester Corporation* v. *Hill* (1898), 62 J. P. 232). But some special Acts do authorise the supply of lamps and fittings. See also note (*k*) to s. 8, *post*, p. 1740, and note (*q*) to s. 10, *post*, p. 1741.

(*u*) See definition in s. 3, *supra*. As to authority to supply electricity in bulk, see s. 4 of the Electric Lighting Act, 1909.

(*x*) The usual prohibition contained in Provisional Orders against the undertakers supplying electrical energy or erecting or laying down any lines or works beyond their statutory areas of supply is of universal application so that they can be restrained by injunction from carrying on business and supplying energy in any other place whatsoever

such consents as are required to the granting a licence under this Act (*y*), and for such period, whether limited or unlimited, as the Board of Trade may think proper, but in all other respects subject to the like provisions as in the last section contained with respect to licences, and subject also to the following provisions :

(1) No Provisional Order shall authorise the supply of electricity by any undertakers within the district of any local authority (not being themselves the undertakers), unless notice that such Provisional Order has been or is intended to be applied for has been given to such local authority by the applicants in such manner as the Board of Trade may direct or approve on or before the first day of July in the year in which such application is made (*z*) ; . . .

(2) The Board of Trade may submit to Parliament for confirmation any Provisional Order granted by it in pursuance of this Act, but any such Order shall be of no force unless and until it is confirmed by Act of Parliament :

(3) If, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to such Order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills :

(4) Any Act confirming any Provisional Order granted in pursuance of this Act may, on the application of the undertakers thereby authorised to supply electricity, be repealed, altered, or amended by any subsequent Provisional Order granted by the Board of Trade and confirmed by Parliament.

Making of rules as to application, etc. under Act.

5. The Board of Trade may from time to time make, and when made may rescind, alter, or repeal rules in relation to the applications for licences or Provisional Orders, and to the payments to be made in respect thereof, and to the publication of notices and advertisements, and the manner in which and the time within which representations or objections with reference to any application are to be made, and to the holding of local inquiries in such cases as they may think it advisable, and to any other matters arising under this Act.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the next session of Parliament (*a*).

however far removed from the statutory area of supply, and although such business be carried on and supply furnished quite independently of any special statutory powers (*Att.-Gen.* v. *Metropolitan Electric Supply Co.*, [1905] 1 Ch. 757 ; 69 J. P. 169). But see ss. 4, 5, 6 of the Electric Lighting Act, 1909, *post*, p. 2114, authorising in certain cases a supply outside the area.

Undertakings authorised since 1909 are protected from competition by unauthorised undertakers by s. 23 of the Electric Lighting Act, 1909, *post*, p. 2120. See also *Newcastle-on-Tyne Electric Supply Co., Ltd.* v. *Newcastle-on-Tyne* (1911), 75 J. P. 97 ; 9 L. G. R. 161.

(*y*) These words are practically repealed by the Electric Lighting Act, 1888, s. 1, which provides that the consent of the local authority shall be required save as therein provided.

(*z*) But see now as to these "July notices" s. 9 of the Electric Lighting Act, 1909, *post*, p. 2117, which in some cases dispenses with the necessity for giving them.

(*a*) The rules must provide for (*inter alia*) the notices required by s. 1 (3) of the Electric Lighting Act, 1909. For the current Rules of the Board of Trade, see *post*, p. 1754.

6. The undertakers shall be subject to such regulations and conditions as may be inserted in any licence, Order, or special Act (*b*) affecting their undertaking with regard to the following matters : Regulations to be inserted in licences, etc.

(a) The limits within which and the conditions under which a supply of electricity is to be compulsory or permissive ;

(b) The securing a regular and efficient supply of electricity ;

(c) The securing the safety of the public from personal injury, or from fire or otherwise ;

(d) The limitation of the prices to be charged in respect of the supply of electricity ;

(e) The authorising inspection and inquiry from time to time by the Board of Trade and the local authority ;

(f) The enforcement of the due performance of the duties of the undertakers in relation to the supply of electricity by the imposition of penalties (*c*) or otherwise, and the revocation of the licence, Order, or special Act where the undertakers have, in the opinion of the Board of Trade, practically failed to carry the powers granted to them into effect within a reasonable time, or discontinued the exercise of such powers ; and

(g) Generally with regard to any other matters in connection with the undertakings.

Provided always, that the Board of Trade may, from time to time, make such regulations as they may think expedient for securing the safety of the public from personal injury or from fire or otherwise (*d*), and may from time to time amend or repeal any regulations which may be contained in any such licence, Order, or special Act in relation thereto ; and any regulations so made or amended by the Board of Trade shall, from and after the date thereof, have the like effect in every respect as though they had been originally inserted in the licence, Order, or special Act authorising the undertaking, and every regulation so repealed shall, from and after the date thereof, be repealed accordingly, but such repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such repeal or any proceeding or remedy which might have been had in relation thereto.

Any local authority within any part of whose district electricity is authorised to be supplied under any licence, Order, or special Act, may, in addition to any regulations which may be made under the preceding provisions of this section for securing the safety of the public, from time to time make, rescind, alter, or repeal byelaws (*e*) for further securing such safety ; and there may be annexed to any breach of such byelaws such penalties to be recovered in a summary manner as they may think necessary : Provided always, that no

(*b*) The usual regulations and conditions on these matters formerly inserted at length are now collectively incorporated by the Electric Lighting Clauses Act, 1899, *post*, p. 1917, in every Provisional Order and special Act made or passed on or since October 1st, 1899, except so far as expressly varied or excepted thereby.

(*c*) By a local Act, a corporation were empowered to make agreements with regard to a supply of electrical energy to consumers and were liable to a penalty for default in supplying energy to any owner or occupier of premises to whom they might be and were required to supply energy under the Act. The plaintiffs, who were not entitled to require a supply under the Act, made an agreement with the corporation for the supply of electrical energy. It was held that an action would lie at the suit of the plaintiffs against the corporation to recover damages for an alleged breach of the agreement, there being no clear words in the statute confining the remedy of the plaintiffs to proceedings to recover the penalty under the section which rendered the corporation liable to such penalty (*Morris and Bastert, Ltd.* v. *Loughborough Corporation*, [1908] 1 K. B. 205 ; 71 J. P. 521).

(*d*) See these regulations, *post*, p. 2354.

(*e*) These byelaws will not be subject to the provisions of the P. H. A., 1875, as to byelaws. Byelaws made under Part II., ss. 13 *et seq.*, of the P. H. A., 1890, do not apply to the posts, wires, etc., of electrical undertakings. See s. 15 of that Act, *ante*, p. 827.

such byelaws shall have any force or effect unless and until they have been confirmed by the Board of Trade and published in such manner as the Board of Trade may direct.

Expenses of local authority.

7. Any expenses incurred by a local authority under this Act, and not otherwise provided for (*f*), including any expenses incurred in connection with the obtaining by them, or any opposition to the obtaining by any other local authority, company, or person, of any licence, Order, or special Act under this Act, may be defrayed out of the local rate as defined in the Schedule to this Act (*g*), and the local authority may from time to time cause such rates to be levied as may be necessary for the purpose of defraying such expenses; provided that where such local authority is a rural sanitary authority such expenses shall be deemed to be special expenses within the meaning of the Public Health Act, 1875 (*h*).

38 & 39 Vict. c. 55.

Power of local authority to borrow money.

8. A local authority authorised to supply electricity by any licence, Order, or special Act may from time to time borrow (*i*) money on such security, with such consent and subject to such provisions and restrictions with respect to borrowing and the repayment of loans, as are in the Schedule to this Act in that behalf mentioned (*k*), and the money so borrowed shall be deemed to be borrowed under the enactments subject to the provisions and restrictions of which it is borrowed, and the accounts of all receipts and expenditure by the local authority in pursuance of this Act, or any licence, Order, or special Act, shall be subject to such audit as is in the said Schedule in that behalf mentioned (*l*): Provided always, that any moneys borrowed under this

(*f*) See the P. H. A., 1875, s. 298, *ante*, p. 628, and notes.

(*g*) See the Schedule, *post*, p. 1752. In urban districts the local rate is the general district rate (*ante*, p. 468); in rural districts it is the rate out of which special expenses (see *ante*, p. 509) are payable. No sanction on the part of the L. G. B. is required to the payment of such costs, as is the case with Orders to which s. 298 of the P. H. A., 1875, applies. It will be observed that no power of borrowing is conferred by the section.

(*h*) See s. 229 of that Act, *ante*, p. 509.

(*i*) Money borrowed under the Electric Lighting Acts is not to-be reckoned as part of the authority's total debt for the purpose of any limitation on borrowing powers: see s. 21 of the Electric Lighting Act, 1909, *post*, p. 2119.

(*k*) These provisions are contained in the P. H. A., 1875, ss. 233, 234, 236—239, *ante*. Where district councils apply to the L. G. B. for sanction to loans for purposes of electric lighting, the L. G. B. require to be furnished with (1) a copy of the resolution of the council authorising the application; (2) a copy of the Electric Lighting Order in force; (3) plans and sections of any proposed buildings, and a general plan showing the position of all the proposed works, distributing mains, and the limits of the district to be lighted by the installation; (4) information as to the type of generator to be used, the power of the engine (steam or gas) to be erected, the method to be adopted for dividing the current, and the kind of lamp to be used; (5) a detailed estimate of the cost of the different works; (6) information, in a form supplied by the Board, as to the assessable value and debt of the district; and (7) evidence that the approval of the Board of Trade has been obtained to the system proposed to be adopted.

The following seem to be the maximum terms allowed by the L. G. B. for loans for purposes of electric lighting:

For land	60 years.
,, buildings	30 ,,
,, cables (laid in ducts or on solid system) and massive iron standards	25 ,,
,, cables (armoured, laid direct in ground but protected) and dynamos	20 ,,
,, switchboards and switches	17 ,,
,, cables (armoured, laid direct in ground), transformers, condensing plant, steam engines, boosters, instruments, and house services	15 ,,
,, motors, economisers, and lamp pillars, etc., for public lighting	10 ,,
,, meters, accumulators and arc lamps	5 ,,

(*l*) That is, the audit prescribed by the P. H. A., 1875, ss. 246—248, *ante*, p. 540.

section by the local authority of any district to which the Local Loans Act, 1875 (*m*), extends, may, if it is thought fit, be borrowed in manner provided by that Act; and in the construction of the said Act for the purposes of this Act the expression "prescribed" means prescribed by any conditions imposed by the authority whose consent is required to borrowing under this section. 38 & 39 Vict. c. 83.

Where any local authority is authorised by any Act to raise any money which they may be empowered to borrow for certain purposes by the issue of corporation or other stock, any money which a local authority may be authorised to borrow under this section may, if it is thought fit, be raised by them by the issue of such stock as aforesaid (*n*).

This section shall not apply to the mayor, commonalty, and citizens of the city of London or to the Metropolitan Board of Works, except in so far as the Metropolitan Board of Works may be concerned in the borrowing of any money by any vestry or district board.

9. The undertakers shall on or before the twenty-fifth day of March (*o*) in every year fill up an annual statement of accounts of the undertaking made up to the thirty-first day of December (*o*) then next preceding; and such statement shall be in such form and shall contain such particulars and shall be published in such manner as may from time to time be prescribed in that behalf by the Board of Trade (*p*). Accounts.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling a copy.

In case the undertakers make default in complying with the provisions of this section, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

10. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade in pursuance of this Act and of any licence, Order, or special Act authorising or affecting their undertaking, and for the purpose of supplying (*q*) electricity, General powers of undertakers under licence or Provisional Order.

(*m*) See the Act, *ante*, p. 1594.

(*n*) A local authority authorised to supply electricity by Provisional Order entered into an agreement with a company by which the local authority were to purchase a site and erect buildings for the generating station, and the company were to fit up the plant and apparatus and carry on the undertaking and receive the profit for their own benefit. It being contemplated that it would be necessary for the local authority to borrow money to enable the company to construct and fit up apparatus, a clause in the agreement provided that the company should pay half-yearly to the local authority sums equal to the sums paid by the local authority in the preceding half-year for interest and sinking fund on money borrowed. It was held that the sums payable half-yearly by the company were an "annual payment" within the meaning of s. 40 of the Income Tax Act, 1853, and that the company in making the payment were entitled to deduct income tax accordingly (*Surbiton U. D. C.* v. *Callender's Cable and Construction Co., Ltd.* (1910), 8 L. G. R. 244).

(*o*) In the case of local authorities these dates are varied by s. 12 of the Electric Lighting Act, 1909, *post*, p. 2117.

(*p*) For forms prescribed, see Will's Law of Electric Lighting, 4th ed.

(*q*) A municipal corporation were the undertakers for the supply of electricity within their area, and purporting to exercise their statutory powers, supplied every description of electrical fittings and apparatus to consumers of electricity. It was held that the statutory powers of the undertakers ceased with the delivery of electricity at the terminals, *i.e.*, the meter, on the consumers' premises, and were complete at that point, and that the general power to do "all such acts and things as were necessary and incidental to such supply" was limited to the generation and delivery of such supply; that the analogy of the supply of gas under the Gasworks Clauses Acts did not apply to the supply of electricity under the Electric Lighting Acts; and that the supply of electrical fittings and apparatus for the use of consumers was *ultra vires* the corporation (*Att.-Gen.* v. *Leicester Corporation*, [1910] 2 Ch. 359; 74 J. P. 385). In a case of a municipal corporation alleged to have in excess of their powers under the Electric Lighting Acts and a confirmed Provisional Order

acquire such lands (*r*) by agreement (*s*), construct such works (*t*), acquire such licences for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply (*u*).

Power for local authority to contract in certain cases and restrictions on assignments of powers, etc. of undertakers.

11. Any local authority who have obtained a licence, Order, or special Act for the supply of electricity, may contract with any company or person for the execution and maintenance of any works needed for the purposes of such supply, or for the supply of electricity within any area mentioned in such licence, Order, or special Act, or in any part of such area; *but no local authority, company, or person shall by any contract or assignment transfer to any other company or person or divest themselves of any legal powers given to them, or any legal liabilities imposed on them by this Act, or by any licence, Order, or special Act, without the consent of the Board of Trade* (*x*).

installed and repaired electric light fittings and wires within and without their area of supply on the consumers' sides of the terminals and also electric bell fittings and wires, the facts were held to have been brought within the judgment in *Att.-Gen.* v. *Leicester Corporation, supra*, where an injunction was granted, and that this would be followed unless the defendants (1) had power as a chartered corporation to carry on the business complained of, or (2) were so empowered by a private Act enabling them to supply mains but not manufacture things for cooking, heating, ventilating and motive power, and also to repair such things. It was held that the first point, not having been raised until the trial, was not open to the defendants, and that if it were, the impugned acts were continuous acts partly *intra vires* and partly *ultra vires* the corporate powers, and could not be dissected, and could not, therefore, be justified; also that the further powers under the Act were confined to the area of supply and to electric motors and apparatus used as sources of power for the specified purposes and did not extend to the objects to which the power was transmitted (*Att.-Gen.* v. *Sheffield Corporation* (1912), 76 J. P. 185; 106 L. T. 367).

(*r*) As to purchase by local authority, see the Electric Lighting Clauses Act, 1899, Sched., clause 8, *post*, p. 1920. A local authority having acquired land for the purpose of erecting thereon works for generating electricity were restrained from using part of such land for the erection of a refuse destructor, although they proposed to use the surplus heat produced by the destruction of refuse in aid of their machinery for generating electricity (*Att.-Gen.* v. *Pontypridd U. D. C.*, [1906] 2 Ch. 257; 70 J. P. 394). The case is an illustration of the general principle that it is *ultra vires* for a local authority having acquired land for particular purposes under the powers of one statute to use the land so acquired or any part of it for another purpose, although such other purpose may be within the powers given to them under some other statute. And see the similar case of *Att.-Gen.* v. *Bradford Corporation* (1911), 75 J. P. 553; 55 Sol. J. 715.

(*s*) Land for a generating station may now be acquired compulsorily. See s. 1 of the Electric Lighting Act, 1909, *post*.

(*t*) Defined by s. 32, *post*, p. 1750. But as to restrictions on the construction of generating stations, see ss. 1 and 2 of the Electric Lighting Act, 1909.

(*u*) See note (*q*), *ante*, p. 1741. By s. 6 of the Telegraph Act, 1892, the undertakers may agree with the Postmaster-General for placing telegraphs in the trenches, tubes, or pipes used for the purposes of laying their own electric line. In the case of *In re St. Nicholas Cole Abbey and St. Benet Fink*, [1893] P. 58, an electric lighting company obtained a faculty for constructing chambers for the storage and transformation of electricity under two disused churchyards in the city of London, and it was held that the vesting of one of such churchyards by local Acts in the corporation to the intent that it might for ever remain unbuilt upon and unused for any purpose, except such ornamental purpose as the bishop should approve, did not preclude the court from granting the faculty. As to sale of lamps and fittings, see note (*t*) to s. 4, *ante*, p. 1737. As to liability for nuisance, see s. 17 and notes, *post*, p. 1745. As to liability of contractors to the local authority, being the undertakers, see *Fulham Borough Council* v. *National Electric Construction Co.* (1906), 70 J. P. 55; 4 L. G. R. 115.

(*x*) The first part of the section deals with cases where the local authority remains the party supplying electricity, though it may contract for the execution of works or buy electricity from some other person or company. The second part, now repealed and replaced by a different provision in s. 14 of the Electric Lighting Act, 1909, *post*, p. 2118, dealt with cases of transfer by the local authority or some other company or person of the legal powers for supplying electricity. Where the effect of a contract between a local authority having statutory powers and a company was to place the company in the position

12. The provisions of the following Acts shall be incorporated with this Act; that is to say, Incorporation of certain provisions of Clauses Consolidation Acts.

(1) The Lands Clauses Acts (*y*), except the enactments with respect to the purchase and taking of lands otherwise than by agreement (*z*), and except the enactments with respect to the entry upon lands by the promoters of the undertaking; and

(2) The provisions of the Gasworks Clauses Act, 1847 (*a*), with respect to breaking up streets (*b*) for the purpose of laying pipes, and with respect to waste or misuse of the gas or injury to the pipes and other works, except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers; and 10 & 11 Vict. c. 15.

(3) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six, of the Gasworks Clauses Act, 1871. 34 & 35 Vict. c. 41.

For the purposes of this Act, in the construction of all the enactments incorporated by this section, "the special Act" means this Act inclusive of any licence, Order, or special Act; and "the promoters" or "undertakers," and "the undertaking," as the case may be, mean the undertakers and the undertaking respectively under this Act.

In the construction of the said Lands Clauses Acts, "land" includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Act, 1871, the said Acts shall be construed as if "gas" meant "electricity," and as if "pipe" meant electric line, and "works" meant "works" as defined by this Act, and as if "the limits of the special Act" meant the area within which the undertakers are authorised to supply electricity under any licence, Order, or special Act.

All offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be prosecuted and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts (*d*).

of the authority as reg rds their statutory powers and duties without the consent of the Board of Trade, the contract was held void, notwithstanding a clause intended to prevent the contract from being as between the parties an assignment or transfer of the statutory powers of the authority (*Sudbury Corporation* v. *Empire Electric Light and Power Co.*, [1905] 2 Ch. 104; 69 J. P. 321). A collateral agreement containing terms of transfer not approved by the Board of Trade, but made a condition of the execution of a transfer deed approved by that Board, was held *ultra vires* and unenforceable (*Lambeth Borough Council* v. *South London Electric Supply Corporation, Ltd.* (1906), 70 J. P. 27; 22 T. L. R. 78). See also *London Electric Supply Corporation, Ltd.* v. *Westminster Electric Supply Corporation, Ltd.* (1913), 11 L. G. R. at p. 1052.

(*y*) These Acts are 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18; 46 & 47 Vict. c. 15, and are (except 32 & 33 Vict. c. 18, which so far as still unrepealed relates only to lands in Westminster) included in this Appendix.

(*z*) But see now s. 1 of the Electric Lighting Act, 1909, *post*, p. 2113, as to compulsory acquisition of land for generating stations.

(*a*) *Ante*, p. 1393. See the provisions in the Electric Lighting Act, 1888, s. 4, *post*, p. 1808, as to the restrictions on placing electric lines in, over, etc., streets.

(*b*) As to breaking up streets, railways, or tramways, outside the area of supply in order to connect with a generating station, see s. 3 of the Electric Lighting Act, 1909, *post* p. 2114; *cf.* also *ibid.*, ss. 4, 6.

(*d*) That is to say, in manner provided by the S. J. A., 1879, ss. 6, 35. See the note to s. 251 of the P. H. A., 1875, *ante*, p. 550.

Restriction on breaking up of private streets, railways and tramways.

13. Nothing in this Act or in any Act incorporated therewith shall authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf inserted in the licence, order, or special Act, or with the written consent of the Board of Trade, and the Board of Trade shall not in any case insert any such special powers in any licence or Provisional Order, or give any such consent until notice has been given to such authority, company, or person by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto (*f*).

Restrictions as to above-ground works.

14. Notwithstanding anything in this Act or in any Act incorporated therewith, the undertakers shall not be authorised to place any electric line above ground, along, over, or across any street, without the express consent of the local authority (*g*), and the local authority may require the undertakers to forthwith remove any electric line placed by them contrary to the provisions of this section, or may themselves remove the same, and recover the expenses of such removal from the undertakers in a summary manner; and where any electric line has been placed above ground by the undertakers in any position, a court of summary jurisdiction, upon complaint made, if they are of opinion that such electric line is or is likely to become dangerous to the public safety, may, notwithstanding any such consent as aforesaid, make an order directing and authorising the removal of such electric line by such person and upon such terms as they may think fit.

Power to undertakers to alter position of pipes and wires.

15. Subject to the provisions of this Act and of the licence, Order, or special Act authorising them to supply electricity, and to any byelaws made under this Act (*h*), the undertakers may alter the position of any pipes or wires being under any street or place authorised to be broken up by them

(*f*) See r. 12 of the Board of Trade Rules, *post*, p. 1758, and the Electric Lighting Clauses Act, 1899, Sched., clause 21 (3), *post*, p. 1931, as to obtaining the consent of the Board of Trade. In the case of *London Corporation* v. *County of London Electric Supply Co.*, [1910] 2 Ch. 208; 74 J. P. 268, the defendants proposed to connect up their areas of supply on the north and south sides of the Thames by laying electric mains along streets, including London Bridge, outside their areas of supply, in pursuance of the powers conferred upon them by the London Electric Supply Act, 1908. London Bridge is not a bridge repairable by the local authority, but is repairable by the corporation of the city of London as trustees of the Bridge House estates. The corporation sought an injunction to restrain the defendants from laying the proposed mains, and a declaration that the Act of 1908 did not entitle them to break up or carry the mains over London Bridge without the corporation's consent. It was held that the defendants had power, subject to the provisions of the Acts therein referred to, to lay electric mains over London Bridge, that is subject to the consent either of the corporation or, if that were refused, of the Board of Trade. In *Andrews* v. *Abertillery U. D. C.*, [1911] 2 Ch. 398; 75 J. P. 449, it was held (KENNEDY, L.J., *dissentiente*) that where there was no person by whom the street was repairable the section operated as an absolute prohibition against the breaking up of the street by the undertakers, and that therefore where a strip of land adjoining a street repairable by the local authority had been dedicated to the public by the owner and had become part of the street, but was not repairable either by the local authority or by the owner or by any other person, the local authority, as undertakers for the supply of electric light in their district, had no power to break up that portion of the street.

(*g*) Therefore the case of *Wandsworth Board of Works* v. *United Telephone Co.*, *ante*, p. 274, will not apply to such wires. See also *National Telephone Co.* v. *Constables of St. Peter Port, Guernsey*, *ante*, p. 275, and *Finchley Electric Light Co., Ltd.* v. *Finchley U. D. C.*, Times, October 17th, 1901. Further restrictions are contained in the Electric Lighting Act, 1888, s. 4, and the Electric Lighting Clauses Act, 1899, Sched., clause 10 (b), *post*, p. 1921. But wires to which this Act applies are not subject to the P. H. A., 1890, ss. 13, 14. See s. 15 of that Act, *ante*, p. 827. As to London, see 54 & 55 Vict. c. lxxvii.

(*h*) See also the Electric Lighting Clauses Act, 1899, Sched., clause 17.

which may interfere with the exercise of their powers under this Act, on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the undertakers and owners, or in case of difference as may be determined in manner prescribed by the licence or Provisional Order authorising the undertakers to supply electricity, or where no such manner is prescribed as may be determined by arbitration, and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local or other public authority, company, or person in relation to such street or place, subject to the like provisions, conditions, and restrictions as are in this section contained with reference to the alteration of the position of any pipes or wires by the undertakers.

Clause for protection of canals.

16. If at any time after the undertakers have placed any works under, in, upon, over, along or across any canal (*i*), any person having power to construct docks, basins or other works upon any land adjoining to or near such canal, constructs any dock, basin or work on such land, but is prevented by the works of the undertakers from forming a communication for the convenient passage of vessels with or without masts between such dock, basin or other work, and such canal; or if the business of such dock, basin or other work is interfered with by reason or in consequence of any such works of the undertakers, then the undertakers at the request of such person, and on having reasonable facilities afforded them by him for placing works round such dock, basin or other work, under, in, upon, over, along or across land belonging to or under his control, shall remove and place their work accordingly. If any dispute arises between the undertakers and such person as to the facilities to be afforded to the undertakers, or as to the direction in which the works are to be placed, it shall be determined by arbitration.

Compensation for damage.

17. In the exercise of the powers in relation to the execution of works given them under this Act, or any licence, Order, or special Act, the undertakers shall cause as little detriment and inconvenience and do as little damage (*j*) as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation in case of difference to be determined by arbitration (*k*).

(*i*) See also as to protection of railway and canal companies the Electric Lighting Clauses Act, 1899, Sched., clause 19, *post*, p. 1929.

(*j*) See s. 26, *post*, p. 1748, for the protection of the Postmaster-General, and ss. 5 (3), 22 of the Electric Lighting Act, 1909, *post*, pp. 2115, 2119, for the protection of certain public buildings.

(*k*) See s. 28, *post*, p. 1749.

A company authorised by private Act to supply a certain district with electric light committed a nuisance and damage to a public-house near their lighting station, by the withdrawal of support caused in digging foundations, and by vibration in working their engines:—*Held*, that "works" in s. 17, as defined by s. 32 of this Act, included only what was required to supply electricity and not the actual supply, and, therefore, the case did not fall within s. 17; but the company were liable in damages at common law, and to be restrained by injunction (*Shelfer* v. *City of London Electric Lighting Co.*; *Meux's Brewery, Ltd.* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287). See also *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; 57 J. P. 373; *Att.-Gen.* v. *Pall Mall Electric Lighting Co.*, Times, March 13th, 1895; *Fowler* v. *Chelsea Electric Supply Co.*; *Sandon* v. *Same*, Times, May 25th, 1895; *Holdsworth* v. *St. Pancras Vestry*, Times, April 18th, 1896; *Hawkes* v. *Leyton U. D. C.*, Times, November 30th, 1900; May 1st, 1901.

A serious annoyance to adjoining occupiers by vibration, noise, and smell, is not to be excused on the ground that it is temporary and occasional (*Knight* v. *Isle of Wight Electric Light and Power Co.* (1904), 73 L. J. Ch. 299; 68 J. P. 266). This is the case although the

Undertakers not to prescribe special form of lamp or burner.

18. The undertakers shall not be entitled to prescribe any special form of lamp or burner to be used by any company or person, or in any way to control or interfere with the manner in which electricity supplied by them under this Act, and any licence, Order, or special Act, is used: Provided always that no local authority, company, or person shall be at liberty to use any form of lamp or burner or to use the electricity supplied to them for any purposes, or to deal with it in any manner so as to unduly or improperly interfere with the supply (*l*) of electricity supplied to any other local authority, company, or person by the undertakers (*m*), and if any dispute or difference arises between the undertakers, and any local authority, company, or person entitled to be supplied with electricity under this Act, or any licence, Order, or special Act, as to the matters aforesaid, such dispute or difference shall be determined by arbitration.

Obligation on undertakers to supply electricity.

19. Where a supply of electricity is provided in any part of an area for private purposes, then except in so far as is otherwise provided by the terms of the licence, Order, or special Act authorising such supply, every company or person within that part of the area shall, on application, be entitled to a supply on the same terms on which any other company or person in such part of the area is entitled under similar circumstances to a corresponding supply (*n*).

Charges for electricity.

20. The undertakers shall not, in making any agreements for a supply of electricity, show any undue preference to any local authority, company, or person, but, save as aforesaid, they may make such charges for the supply of electricity as may be agreed upon, not exceeding the limits of price imposed by or in pursuance of the licence, Order, or special Act authorising them to supply electricity (*o*).

defendants are a local authority having under a Provisional Order a power to supply electricity (*Colwell* v. *St. Pancras Borough Council*, [1904] 1 Ch. 707; 68 J. P. 286). No special consideration is due to the fact that the complaint is made in respect of a place of worship, but the general character of the neighbourhood and all the surrounding circumstances must be considered, and an injunction will be refused unless there is a serious annoyance (*Heath* v. *Brighton Corporation* (1908), 72 J. P. 225).

(*l*) See note (*q*), *ante*, p. 1741.

(*m*) See also the Electric Lighting Clauses Act, 1899, Sched., clause 27 (4), *post*, p. 1934.

(*n*) No one is entitled to demand a supply of energy under this section unless and until he has made a contract with the undertakers for the supply. Thus a receiver for debenture-holders taking possession of a hotel for the lighting of which the company, who were proprietors, were in debt to an electric supply company, was held not to be entitled to a further supply, as he refused to pay the arrears which the electric supply company demanded payment of as a condition for continuing the light (*Husey* v. *London Electric Supply Corporation*, [1902] 1 Ch. 411).

See s. 15 of the Electric Lighting Act, 1909, *post*, p. 2118, as to the right of undertakers to require a *minimum* annual payment in the case of premises having a separate supply; and see s. 18, *ibid.*, as to their right to refuse a supply to a person who is in their debt for electricity previously supplied.

In *Metropolitan Electric Supply Co., Ltd.* v. *Ginder*, [1901] 2 Ch. 799, at p. 811, it was held by BUCKLEY, J., that the words "a supply on the same terms" used in this section bear their natural meaning, and include price. In *Att.-Gen. for Victoria* v. *Melbourne Corporation*, [1907] A. C. 469, at p. 475, the Privy Council approved this construction with regard to the same words as used in s. 38 of the Victorian Electric Lighting and Power Act, 1896, that section being practically identical with this. But s. 39 of that Act dealing with preference differs in its wording from s. 20 of this Act, relating to the same subject. The Privy Council held that on the true construction of ss. 38 and 39 of the Victorian Act the corporation were authorised to supply electricity under two different systems of charge —one at a fixed rate and the other at a rate varying with the amount consumed, the system adopted being at the choice of the customer and no preference being given within each system to one consumer over another.

(*o*) See also the Electric Lighting Clauses Act, 1899, Sched., clauses 31—34, *post*, p. 1935, and the Electric Lighting Act, 1909, s. 17, *post*, p. 2119. A form of agreement is given in Key and Elphinstone's Precedents in Conveyancing, 8th ed.; but from the consumer's point of view the agreement should always contain a provision that no change should be

21. If any local authority, company, or person neglect to pay any charge for electricity or any other sum due from them to the undertakers in respect of the supply of electricity to such local authority, company, or person, the undertakers may cut off such supply, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied, and may, until such charge or other sum, together with any expenses incurred by the undertakers in cutting off such supply of electricity as aforesaid, are fully paid, but no longer, discontinue the supply of electricity to such local authority, company, or person (*p*). Recovery of charges, etc.

22. Any person who unlawfully and maliciously cuts or injures any electric line or work with intent to cut off any supply of electricity shall be guilty of felony, and be liable to be kept in penal servitude for any term not exceeding five years, or to be imprisoned with or without hard labour for any term not exceeding two years; but nothing in this section shall exempt a person from any proceeding for any offence which is punishable under any other provision of this Act, or under any other Act, or at common law, so that no person be punished twice for the same offence. Injuring works with intent to cut off supply of electricity.

23. Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity shall be guilty of simple larceny and punishable accordingly. Stealing electricity.

24. Any officer appointed by the undertakers may at all reasonable times enter (*q*) any premises to which electricity is or has been supplied (*r*) by the undertakers, in order to inspect the electric lines, meters, accumulators, fittings, works, and apparatus for the supply of electricity belonging to the undertakers (*s*), and for the purpose of ascertaining the quantity of electricity consumed or supplied, or where a supply of electricity is no longer required, or where the undertakers are authorised to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works, or apparatus belonging to the undertakers (*s*), repairing all damage caused by such entry, inspection, or removal. Power to enter lands or premises for ascertaining quantities of electricity consumed, or to remove fittings, etc.

25. Where any electric lines, meters, accumulators, fittings, works, or apparatus belonging to the undertakers (*s*) are placed in or upon any premises not being in the possession of the undertakers for the purpose of supplying electricity under this Act, or any licence, Order, or special Act, such electric lines, meters, accumulators, fittings, works, or apparatus shall not be subject to distress or to the landlord's remedy for rent of the premises where the Electric lines, etc. not to be subject to distress in certain cases.

made in the pressure of the supply. A contract containing a clause that the consumer agrees to take the whole of the electric energy required for his premises from the company for a period of not less than five years at a fixed charge not exceeding the limit under this section, does not contravene this or the preceding section, and may be enforced by injunction (*Metropolitan Electric Supply Co.* v. *Ginder*, [1901] 2 Ch. 799; 65 J. P. 519). And see *Att.-Gen.* v. *Long Eaton U. D. C.* (1914), 78 J. P. N. 232. By a contract for electric lighting installation, it was provided that the work should be completed in all respects before November 26th, 1898, subject to a penalty of £15 a day, and the plant by December 10th, subject to a penalty of £3 per day for every day the work remained unfinished to the satisfaction of the authorities or engineers:—*Held*, that although the word "penalties" was used, the amounts incurred owing to the default of the contractors were, in fact, "liquidated damages" (*Re White and Arthur* (1901), 84 L. T. 594). For the construction of an agreement for the supply of electricity and as to the finality of meter readings, see *Gravesend and Northfleet Electric Tramways, Ltd.* v. *Gravesend Corporation* (1910), 74 J. P. 156; 8 L. G. R. 445.

(*p*) These charges are recoverable like gas rents, subject to the qualifications contained in the last clause of s. 12, *ante*, p. 1743.

(*q*) No penalty is provided for obstructing the officer. Compare the Gasworks Clauses Act, 1871, s. 21, *ante*, p. 1542.

(*r*) See note (*q*), *ante*, p. 1741.

(*s*) As to lines, etc., let on hire, or sold on the instalment principle, see s. 16 of the Electric Lighting Act, 1909, *post*, p. 2118.

same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be (*t*).

Provision for protection of the Postmaster-General. 41 & 42 Vict. c. 76.

26. (*tt*) No alteration in any telegraph line of the Postmaster-General shall be made by the undertakers except subject to the provisions of the Telegraph Act, 1878.

The undertakers shall not in the exercise of the powers conferred by this Act, or by any licence, Order, or special Act, lay down any electric line or do any other work for the supply of electricity whereby any telegraphic line of the Postmaster-General is or may be injuriously affected, and before any such electric line is laid down or work is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than repairs or the laying of connexions with mains where the direction of the electric lines so laid down crosses the line of the Postmaster-General at right angles at the point of shortest distance and continues the same for a distance of six feet on each side of such point) the undertakers or their agents not more than twenty-eight nor less than seven clear days before commencing such work shall give written notice to the Postmaster-General specifying the course and nature of the work, including the gauge of any electric lines, and the undertakers and their agents shall conform with such reasonable requirements either general or special as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphs of the Postmaster-General from being injuriously affected by the said work.

Any difference which arises between the Postmaster-General and the undertakers or their agents with respect to any requirements so made, shall be determined by arbitration.

In the event of any contravention of or wilful non-compliance with this section by the undertakers or their agents the undertakers shall be liable to a fine not exceeding ten pounds for every day during which such contravention or non-compliance continues, or, if the telegraphic communication is wilfully interrupted, not exceeding fifty pounds for every day on which such interruption continues.

Provided that nothing in this section shall subject the undertakers or their agents to a fine under this section, if they satisfy the court having cognizance of the case that the immediate execution of the work was required to avoid an accident, or otherwise was a work of emergency, and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the work was done a notice of the execution thereof, stating the reason for executing the same without previous notice.

For the purposes of this section a telegraphic line of the Postmaster-General shall be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such work, or by any use made of such work.

For the purposes of this section, and subject as therein provided, sections two, seven, eight, nine, ten, eleven, and twelve of the Telegraph Act, 1878, shall be deemed to be incorporated with this Act, as if the undertakers were undertakers within the meaning of those sections, without prejudice never-

(*t*) A somewhat similar provision was contained in the Gasworks Clauses Act, 1847, s. 14, with reference to which see *Gaslight and Coke Co.* v. *Hardy* (1886), 17 Q. B. D. 619; 51 J. P. 6. A person who procures possession of a house under an agreement between him and the owner for a lease thereof, with the fraudulent intention of stealing the fixtures thereto belonging, and upon obtaining possession severs and steals the fixtures, is guilty of larceny under the Larceny Act, 1861, s. 31 (*R.* v. *Richards*, [1911] 1 K. B. 260; 75 J. P. 144).

(*tt*) See also s. 4 of the Act of 1888, *post*, p. 1808.

theless to any operation which the other sections of the said Act would have had if this section had not been enacted (*u*).

27. [*Purchase of undertaking by local authority.*] (*x*)

28. Where any matter is by this Act, or any licence, Order, or special Act (*y*), directed to be determined by arbitration, such matter shall, except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs. Arbitration.

Any licence or Provisional Order granted under this Act shall be deemed to be a special Act within the meaning of the Board of Trade Arbitrations, etc., Act, 1874. 37 & 38 Vict. c. 40.

29. Where a supply of electricity is authorised in any area by any licence, Order, or special Act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any Provisional Order or special Act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand (*z*), the Board of Trade may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the Board of Trade may in their discretion make an Order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such Order such gas undertakers shall be so relieved accordingly. All expenses of the Board of Trade in connection with any such inquiry or Order shall be borne and paid by the gas undertakers upon whose application the inquiry or Order was made. Power for Board of Trade to relieve gas undertakers from obligation to supply gas in certain cases.

30. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past (*a*). Annual report by Board of Trade.

31. In this Act, unless the context otherwise requires, the expressions "local authority" and "local rate" mean, as respects each district set forth in the first column of the Schedule to this Act annexed, the authority and rate mentioned opposite to that district in the second and third columns Definition of local authority, etc.

(*u*) Section 2 of the Telegraph Act, 1878, contains certain definitions of expressions used in that Act, and is amended by the Light Railways Act, 1896, s. 25. Section 7 makes provision as to work done in pursuance of special Acts of Parliament which involves alteration in any telegraphic line. Section 8 deals with compensation and fines for injury to any telegraphic line of the Postmaster-General, and for interruption of telegraphic communication. Section 9 enacts a penalty for obstruction. Section 10 provides for the prosecution of offences. See further, as to the protection of the Postmaster-General, note (*h*), *post*, p. 1808, and the Electric Lighting Clauses Act, 1899, Sched., clauses 14, 79, *post*, pp. 1923, 1946.

(*x*) This section was repealed by the Electric Lighting Act, 1888, s. 2, *post*, p. 1807, which contains substituted provisions as to purchase by the local authority. See also s. 7 of the Electric Lighting Act, 1909, *post*, p. 2116.

(*y*) Or by the Electric Lighting Clauses Act, 1899, *post*, p. 1917, where it applies. See, for instance, clause 18 (4) of the Schedule to that Act and *Chepstow Gas Co.* v. *Chepstow Electric Supply Co.*, [1905] 1 K. B. 198; 69 J. P. 72.

(*z*) See the Gasworks Clauses Act, 1871, ss. 11, 36, *ante*, pp. 1539, 1545.

(*a*) See also s. 13 of the Electric Lighting Act, 1909, as to the Board making a return with regard to auditors' reports.

of that Schedule; and such Schedule, and the notes appended thereto, shall be of the same validity as if enacted in the body of the Act.

Interpretation.

32. In this Act, unless the context otherwise requires—

The expression "electricity" means electricity, electric current, or any like agency (*b*):

The expression "electric line" means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents:

The expression "works" means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act (*c*):

The expression "company" means any body of persons corporate or unincorporate:

8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18.

The expression "Lands Clauses Acts" means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869:

The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any licence, Order, or special Act (*d*):

32 & 33 Vict. c. 73.

The expression "telegram" has the same meaning as in the Telegraph Act, 1869 (*e*).

For the protection of mines.

33. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals.

Provision as to general Acts.

34. Nothing in this Act shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of electricity which may be passed in this or any future session of Parliament (*f*).

Saving for privileges of Postmaster-General.

35. Nothing in this Act or in any licence, Order, or special Act, shall affect the exclusive privileges conferred upon the Postmaster-General by the Telegraph Act, 1869, or authorise or enable any local authority, company, or person to transmit any telegram or to perform any of the incidental services of receiving, collecting, or delivering telegrams, or give to any local authority, company, or person, any power, authority, or facility of any kind whatever,

(*b*) See definition of "energy" in the Electric Lighting Clauses Act, 1899, Sched., clause 1, *post*, p. 1917.

(*c*) See *Meux's Brewery, Ltd.* v. *City of London Electric Lighting Co.*, *ante*, p. 1745, and *note* (*q*), *ante*, p. 1741.

(*d*) See a further definition of this expression for the purposes of the Electric Lighting Act, 1888, s. 4, in sub-s. (5) of that section, *post*, p. 1809.

(*e*) By s. 3 of the Telegraph Act, 1869, the term "telegram" shall mean any message or other communication transmitted or intended for transmission by telegraph. And the term "telegraph" shall, in addition to the meaning assigned to it in the Telegraph Act, 1863, mean and include any apparatus for transmitting messages or other communications by means of electric signals. These definitions include the telephone and telephonic messages (*Att.-Gen.* v. *Edison Telephone Co. of London* (1880), 6 Q. B. D. 244).

(*f*) *Cf.* the Gasworks Clauses Act, 1847, s. 49, *ante*, p. 1448.

in connection with the transmission of telegrams, or the performance of any of the incidental services of receiving, collecting, or delivering telegrams (g).

* * * * *

(g) See also the Electric Lighting Act, 1888, s. 4 (5), *post*, p. 1809. The Postmaster-General may, by written licence under the Telegraph Act, 1869, s. 5, authorise the transmission of telegrams otherwise than by the post office. As to payment of expenses of exercise of powers by an urban district council under a telephone licence from the Postmaster-General, see the Telegraph Act, 1899, s. 2, *post*, p. 1955.

Section 36 relates to Scotland, and s. 37 to Ireland. These sections and the parts of the Schedule relating to Scotland and Ireland are omitted.

SCHEDULE.

ENGLAND AND WALES.

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</table>

Urban sanitary district (1).	The urban sanitary authority (1).	The fund or rate applicable to the general purposes of the Public Health Act, 1875, in the district, or any other fund or rate applicable to lighting under any local Act (*h*).	The local rate as herein defined and any property of the local authority.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875 (*k*).	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	In the case of boroughs (2), that prescribed by section two hundred and forty-six of the Public Health Act, 1875, and in the case of other urban sanitary authorities that prescribed by section two hundred and forty-seven of the same Act (*m*).
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory place or places (1) comprised within the area of supply are payable under the Public Health Act, 1875 (*i*).	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875 (*k*).	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	That prescribed by section two hundred and forty-eight of the Public Health Act, 1875 (*m*).

NOTES.

(1) " Urban sanitary district," " urban sanitary authority," " rural sanitary district," " rural sanitary authority," and " contributory place," have the meanings respectively assigned to them in the P. H. A., 1875. [See ss. 6—9 of that Act, *ante*.]

(2) " Borough " means any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, " An Act to provide for the Regulation of Municipal Corporations in England and Wales," and the Acts amending the same. [This Act is now repealed, and the Municipal Corporations Act, 1882, is substituted for it.]

(*h*) See the P. H. A., 1875, s. 207, *ante*, p. 468.
(*i*) See the P. H. A., 1875, s. 229, *ante*, p. 509.
(*k*) That is the L. G. B. See the section, *ante*, p. 519.
(*m*) See these sections, *ante*, pp. 541, 547.

The following are the rules made by the Board of Trade in pursuance of section 5 of the Electric Lighting Act, 1882, with respect to applications for provisional orders :—

A.—MODE AND TIME OF MAKING APPLICATION.

Rule I.—Every application for a provisional order must be made by memorial signed or sealed by, or on behalf of, the applicants, headed with a short title descriptive of the objects of the proposed application (corresponding with that at the head of the advertisement herein-after mentioned, see Rule II.), addressed to the Board of Trade. The memorial must be lodged on or before the 21st day of December.

B.—STEPS TO BE TAKEN BEFORE MAKING THE APPLICATION.

(a) *Notices which must be given.*

Rule II.—Applicants for a provisional order must, in the month of October or November, publish notice by advertisement of their intended application, and every such advertisement must contain the following particulars :—

1. The objects of the application.
2. The address and description of the applicants.
3. A description of the proposed area of supply (if any).
4. The names of the streets (if any) in which it is proposed that electric lines shall be laid down within a specified time.
5. A list of the streets not repairable by a local authority and of the railways and tramways (if any) which the applicants propose to take special powers by the order to break up.
6. The address of an office in London, and another office within the area of supply at which printed copies of the draft order when applied for, and of the order when made, can be obtained at a price of not more than one shilling each.
7.—(a) In the case of a provisional order to authorise the compulsory acquisition or the use of land for a generating station, a description of that land (*n*).

(b) In the case of a provisional order relating to the purchase of a generating station, mains or other works used solely for supplying electricity within the districts of two or more local authorities, but not situated within any of those districts, a description of the position of the generating station, mains or other works to be purchased.

(c) In the case of a provisional order for the constitution of a joint committee or joint board, the basis upon which the representation on, and the financial requirements of the joint committee or joint board and the contribution to the common fund by the constituent authorities are to be provided for.

The advertisement must in each case be headed with a short title, descriptive of the objects of the proposed application (corresponding with that at the head of the memorial), and it must state that every local or other public authority, company, or person desirous of bringing before the Board of Trade any objection respecting the application must do so by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it, "Electric Lighting Acts," on or before the 15th day of January next ensuing, and that a copy of such objection must also be forwarded to the parliamentary agents or solicitors for the order.

The advertisement must be inserted once at least in each of two successive weeks in one and the same local newspaper, circulating in the district or districts to which the application relates, or, in the case of an application under section 7 of the Electric Lighting Act, 1909, in the districts of the local authorities making the application, or in such other newspaper as the Board

(*n*) At the time of proving the publication of the notice, the Board of Trade will require proof that at the date of the first publication of the notice no part of the land proposed to be compulsorily acquired belonged to any gas or water undertakers and was used or authorised to be used by them for the purposes of their undertaking. (See section 24, Electric Lighting Act, 1909.)

of Trade may direct; and once at least in the London, Edinburgh, or Dublin Gazette, according as the district or districts is or are situated in England, Scotland, or Ireland.

Rule III.—Any company or person intending to apply for a provisional order to authorise the distribution of electricity must on or before the 1st day of July in the year in which the application is made give notice to the local authority. (See section 4 (1), Electric Lighting Act, 1882 (*o*).)

> Note.—In a case where this notice has not been given the Board of Trade may notwithstanding grant the order provided the local authority waives its right to receive the said notice. (See section 9, Electric Lighting Act, 1909.) The fact that such right has been waived must be proved in the same manner as the consent of a local authority. (See Rule IX.)

Rule IV.—Any local authority, company, or person intending to apply for a provisional order to authorise the distribution of electricity must, on or before the 1st day of November in the year in which the application is made, give notice of their intended application to every company or person authorised under statutory powers to distribute electricity within the area to which the proposed application relates; and any local authority, company, or person intending to apply for a provisional order to authorise the supply of electricity in bulk must, on or before the said date, give notice of their intended application to every local authority, company, or person authorised under statutory powers to supply electricity in bulk or to distribute electricity within the area to which the proposed application relates.

Rule V.—In the case of a provisional order to authorise the compulsory acquisition of land for the purpose of a generating station, the applicants must on or before the 15th day of December in the year in which the application is made, serve a notice on the owners, or reputed owners, lessees, or reputed lessees, and occupiers of all lands intended to be so acquired as shown on the deposited plan, describing in each case the particular lands intended to be so acquired.

Every such notice as aforesaid shall be as nearly as may be in the form set out in the schedule to these rules.

Rule VI.—On or before the 15th day of December in the year in which the application is made for a provisional order to authorise the compulsory acquisition or the use of land for the purpose of a generating station, the applicants must serve a notice upon the local authority of the district in which the land is situate and upon all owners or reputed owners and lessees or reputed lessees of land situate within three hundred yards of the land proposed to be so acquired or used (*p*).

Rule VII.—In any case where a local authority, company, or person is required to give notice to any local authority, company, or person, the notice must be given in writing, and must be served, either by leaving the same at the offices of the local authority or company or at the address of the person on or before the day prescribed in that behalf or by forwarding the same by post in a registered letter so that the same would in ordinary course of post be delivered on or before that date.

(b) *Consent which must be obtained and how the same must be proved.*

Rule VIII.—An application for a provisional order to authorise the distribution or the supply in bulk of electricity (other than an application from the local authority of the district which comprises the area of supply) or the breaking up of roads outside the applicants' area of supply, will not be entertained by the Board of Trade unless proof of the consent of every local authority having jurisdiction within the area of supply or within the districts in

(*o*) Except in the case of an application by the local authority for the district a provisional order to authorise the distribution of electricity will not be granted by the Board of Trade except to the body or person by whom or on whose behalf the notice required by s. 4 (1) of the Electric Lighting Act, 1882, was given.

(*p*) A generating station for the purposes of this rule does not include a station for transforming, converting or distributing electrical energy. (See s. 2 of the Electric Lighting Act, 1909.)

which the roads are situate, as the case may be, to the grant of the order, or where any such consent has been refused a request from the applicants asking the Board of Trade to dispense with the consent of such local authorities as have not consented and giving the reasons for such request, is deposited with the Board of Trade on or before the 22nd day of February.

Rule IX.—Where the consent of any local authority is required to the grant of a provisional order, the consent must be given by a resolution passed at a meeting of the local authority held after previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of the local authority are usually given; and the fact that such a resolution as aforesaid was duly passed must be proved by a certificate signed by the secretary or clerk to the local authority reciting a copy of the notice and of the resolution, and declaring that the notice was duly given and the resolution duly passed (*q*).

(c) *Deposits which must be made on or before the 30th November.*

Rule X.—The applicants must in each case deposit at the office of the Board of Trade on or before the 30th day of November a copy of the advertisement referred to in Rule II.

In the case of a provisional order to authorise the distribution of electricity, the applicants must also deposit at the office of the Board of Trade a published map of the district on a scale of not less than six inches to a mile, or if there is no published map, then the best map procurable, showing the boundaries of the area of supply, and the streets in which it is proposed that electric lines shall be laid down within a specified time.

In the case of a provisional order to authorise the breaking up of roads, railways and tramways outside an area of supply, or the supply of electricity in bulk, the applicants must deposit at the office of the Board of Trade a similar map showing, as the case may be, the roads, railways and tramways proposed to be broken up, or the districts in which the supply in bulk is to be given.

In the case of a provisional order relating to the purchase of a generating station, mains or other works used solely for supplying electricity within the districts of two or more local authorities, but not situated within any of those districts, the applicants must deposit at the office of the Board of Trade a similar map showing the area of supply and the position of the generating station, mains and other works to be purchased.

In the case of a provisional order for the constitution of a joint committee or joint board the applicants must deposit at the office of the Board of Trade a similar map showing the districts or parts of districts in respect of which the joint committee or joint board is proposed to be constituted.

In the case of a provisional order to authorise the compulsory acquisition or the use of land for the purposes of a generating station, the applicants must deposit at the office of the Board of Trade a plan of the site of the land, and, in the case of compulsory acquisition, a book of reference.

The plan must be on a scale of not less than a quarter of an inch to every hundred feet and must have shown thereon any building, yard, courtyard, land within the curtilage of any building, and any ground cultivated as a garden.

The book of reference must contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses proposed to be taken compulsorily and must describe such lands and houses respectively. It must also contain the names of the owners or reputed owners and lessees or reputed lessees of land situate within three hundred yards of the land upon which the generating station is to be constructed.

The applicants must also on or before the 30th day of November deposit a copy of the said advertisement and of the said maps or plan and book of reference for public inspection—

In England or Ireland, at the office of the clerk of the peace for every

(*q*) At the time of proving a consent of the local authority to the grant of a provisional order, the applicants must deposit with the Board of Trade a copy of any agreement relating to such consent.

county, riding, or division, and at that of the local authority of every district
In Scotland, at the office of the principal sheriff clerk for every county, and where any county is divided into districts for sheriff court purposes, at the office of the sheriff clerk in each of such districts, and also at that of the local authority of every district
to which the application relates.

In the case of a provisional order relative to the Administrative County of London, the applicants must also on or before the date aforesaid deposit a copy of the said maps, plan and book of reference at the office of the London County Council.

(d) *Preparation of draft Order.*

Rule XI.—The applicants must in each case prepare a draft of the proposed order.

The draft order must be in print. It must be printed on one side only and each schedule annexed must begin a new page.

The names and addresses of the parliamentary agents or solicitors for the order must be printed on the outside of the draft.

There must be a notice at the end of the draft stating that objections are to be made by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it "Electric Lighting Acts," and that the letter is to be sent to the Board of Trade on or before the 15th day of January next ensuing, and that a copy of the objections is to be forwarded to the parliamentary agents or solicitors for the order.

The draft must, where the application is other than for the constitution of a joint committee or joint board, contain amongst other things—

1. The address and description of the applicants.

2. A description of the proposed area of supply (if any), and in the case of a provisional order for authorising the supply of electricity in bulk, a description of the roads, railways and tramways along the route along which electric lines are to be laid for the purpose of giving the supply.

(*r*) 3. A statement of the purposes for which a supply is to be given, viz., any or all of the public or private purposes specified in section 3 of the Electric Lighting Act, 1882, or in bulk.

(*r*) 4. Provisions concerning the breaking up of roads, railways, and tramways, where powers are sought to be obtained by the order for those purposes.

(*r*) 5. Conditions of supply.

(*r*) 6. Provisions for securing the safety of the public from injury by shock, fire, or otherwise.

(*r*) 7. Provisions for enforcing the performance by the undertakers of their duties in relation to the supply of electricity and for the revocation of the order where the undertakers fail to perform such duties.

8. In the case of a provisional order to authorise the compulsory acquisition or the use of land for the purposes of a generating station, a description of such land.

9. In the case of a provisional order to authorise a supply of electricity at any point within an area to be used for purposes incidental to the working or lighting of a railway, tramway or canal (other than haulage or traction or the lighting of vehicles or vessels) partly within and partly without that area, a description of the railway, tramway or canal, the names of the districts in which the electricity is to be used and a statement of the purposes for which the supply is to be given.

10. In the case of a provisional order relating to the purchase of a generating station, mains or other works used solely for supplying electricity within the districts of two or more local authorities but not situate within any of those districts, a description of the generating station, mains or other works to be purchased, and a list of the districts to which electricity is supplied therefrom.

(*r*) Except in the case of applications relating to the county of London, these particulars must not be set out at length in the draft order, but must be provided for by the incorporation of the provisions contained in the schedule to the Electric Lighting (Clauses) Act, 1899.

11. In the case of a provisional order for the constitution of a joint committee or joint board the draft order must, in addition to such of the particulars hereinbefore stated as shall be applicable, contain :—

(a) A description of the purposes for which the committee or board is to be constituted.

(b) Provisions for constituting the committee or board, for the appointment and removal of members, and for the meetings of the committee or board.

(c) Provisions (1) relating to the financial arrangements between the proposed constituent authorities ; (2) for the appointment and remuneration of officers ; and (3) for settling differences between the committee or board and any of the constituent authorities.

(d) Provisions as to audit of accounts (*s*).

(e) Provisions for adapting the provisions of the Electric Lighting Acts, 1882 to 1909, or any provisional order in force in the area of supply or any part thereof to the case of the committee or board proposed to be constituted.

C.—STEPS TO BE TAKEN WHEN MAKING THE APPLICATION.

(a) *Deposits which must be made with the Board of Trade.*

Rule XII.—The applicants must in each case when lodging their memorial deposit with it—

1. Six printed copies of the draft order.

2. A list of the local authorities in whose districts the area of supply (if any) is situated.

3. In the case of a provisional order relating to the purchase of a generating station, mains or other works used solely for supplying electricity within the districts of two or more local authorities but not situate within any of those districts, a list of the local authorities within whose districts the generating station, mains and other works are situate.

4. A list of the local authorities, companies, or persons (if any) authorised to supply electricity under statutory powers within the area of supply.

5. In the case of an application by a local authority, the following particulars :—

(a) The sum proposed to be expended on the undertaking :

(b) Whether it is proposed to raise a loan for the purposes of the undertaking :

(c) The rateable value of the district :

(d) The amount of indebtedness and the borrowing powers of the applicants for all purposes :

(e) The amount of the rates in the pound : and

(f) A statement showing that a definite scheme (including an estimate of the cost) for the supply of electricity has been prepared and considered by the local authority, and a report by an electrical engineer on the proposed scheme.

In the case of a provisional order for the constitution of a joint committee or joint board there must be deposited with the memorial (in addition to such of the deposits hereinbefore specified as are applicable) the following particulars :—

(g) The rateable value of each of the districts of the proposed constituent authorities.

(h) The amount of indebtedness and the borrowing powers of each of the proposed constituent authorities.

(i) The amount of the rates in the pound in the district of each of the proposed constituent authorities.

(j) A statement showing (where the proposal is not for the combination of existing undertakings actually worked) that a definite scheme (including an estimate of the cost) for the supply of electricity has been pre-

(*s*) Where the accounts of one or more of the constituent authorities are subject to audit by an auditor appointed by a Government department the draft order must provide for the accounts of the joint committee or joint board being so audited.

pared and considered by the proposed constituent authorities and also a report by an electrical engineer on the proposed scheme.

(k) A statement of the proportions in which the cost is to be defrayed by the proposed constituent authorities.

(l) A copy of any agreement between the proposed constituent authorities relating to the application.

In the case of an application other than by a local authority, a statement of the capital proposed to be expended in connexion with the undertaking, and the mode in which such capital is to be provided.

In the case of a provisional order to authorise the breaking up of roads, railways or tramways outside an area of supply for the purpose of enabling electricity to be brought into that area from a generating station situated outside that area, there must also be deposited :—

(m) A list of the local authorities in whose districts the roads, railways or tramways are situate ;

(n) A list of the roads, railways and tramways.

6. If the applicants are a company incorporated under the provisions of the Companies Acts, a copy of the memorandum and articles of association.

7. A fee of £35 by cheque, payable to the Accountant-General of the Board of Trade, to cover ordinary expenses. If in consequence of inquiries or otherwise additional expense is incurred, the amount will be charged to the applicants and must be paid by them in addition to the ordinary fee.

(b) *Deposits which must be made at the offices referred to in the advertisement.*

Rule XIII.—The applicants must on or before the 21st day of December deposit a sufficient number of printed copies of the draft order at offices in London and within the area of supply specified in the advertisement hereinbefore mentioned (see Rule II.), such copies to be there furnished to all persons applying for them, at a price of not more than one shilling each.

(c) *Deposits which must be made with the Local Government Board, the Secretary for Scotland or the Local Government Board for Ireland.*

Rule XIV.—In the case of a provisional order for the constitution of a joint committee or joint board the applicants must, on or before the 21st day of December, deposit with the Local Government Board, the Secretary for Scotland, or the Local Government Board for Ireland, according as the application relates to an area of supply in England, Scotland, or Ireland, a copy of the draft order and of every map, plan or other document required to be deposited with the Board of Trade.

(d) *Deposit which must be made with the London County Council.*

Rule XV.—In the case of a provisional order relating to the Administrative County of London the applicants must, on or before the 21st day of December, deposit a copy of the draft order at the office of the London County Council who shall be entitled to make representations to and be heard by the Board of Trade thereon.

D.—Objections to Grant of Order—how to be made.

Rule XVI.—If any local or other public authority, company, or person desires to bring before the Board of Trade any objection respecting an application for a provisional order, they must do so by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it, " Electric Lighting Acts," on or before the 15th day of January next after the application. A copy of the objection must also on or before the said date be furnished to the parliamentary agents or solicitors for the order. If any local or other public authority, company, or person desires to have any clauses or other amendments inserted in the order, they must deliver the same to the Board of Trade, and also to the parliamentary agents or solicitors for the order, within the time limited for bringing objections.

E.—PROOF OF COMPLIANCE WITH THE ELECTRIC LIGHTING ACTS AND THE FOREGOING RULES.

Rule XVII.—The parliamentary agents or solicitors for the order must be prepared to prove compliance with the provisions of the Acts and the foregoing rules by the 15th day of January, and all such proofs must be completed on or before the 22nd day of February. Six days' notice will be given of the day and hour at which such agents or solicitors are to attend for the purpose at the office of the Board of Trade, and printed forms of proof will accompany the notice. These forms must be filled up and brought with the requisite documents to the office of the Board of Trade at the time fixed for receiving proof.

F.—STEPS TO BE TAKEN AFTER ORDER IS GRANTED.

Rule XVIII.—When a provisional order has been granted by the Board of Trade and delivered to the applicants, they must forthwith deposit printed copies for public inspection at the offices specified in Rule X., and must supply copies to all persons applying for the same, at a price of not more than one shilling each, and must further publish the same as the Board of Trade may direct.

Proof of compliance with this rule must be made within one month from the grant of the order in such manner as the Board of Trade may direct.

Rule XIX.—Where in a provisional order granted by the Board of Trade a deposited map is referred to, the promoters must within one month from the grant of the order deposit at the Board of Trade a published map on a scale of not less than six inches to a mile, or if there is no published map then the best map procurable, showing the area of supply. The map must be mounted on linen, and must be certified as correct as regards its district by the clerk or surveyor to every local authority having jurisdiction within the area of supply.

G.—PROCEDURE WHEN BOARD OF TRADE HAVE REFUSED TO GRANT A PROVISIONAL ORDER AND APPLICANTS PROPOSE TO PROCEED BY PRIVATE BILL (SECTION 4 OF THE ELECTRIC LIGHTING ACT, 1909).

Rule XX.—In any case where the Board of Trade refuse to grant a provisional order to authorise a supply of electricity in bulk, on the ground that the matter ought to be dealt with by private Bill, and the applicants intend to proceed by private Bill, the notice required by section 4, sub-section 2, of the Electric Lighting Act, 1909, informing all opponents of that intention must be served by being addressed to each opponent or his parliamentary agent or solicitor within fourteen days from the date of the Board's refusal to grant the provisional order.

The Board of Trade,
29th July, 1910.

H. LLEWELLYN SMITH,
Secretary.

NOTE.—When applications for provisional orders to authorise the distribution of electricity within the district of any local authority are received by the Board of Trade from that local authority, and also from any other authority, company, or person, the Board of Trade will give a preference to the application of the local authority of the district in every case where, in the opinion of the Board of Trade, no special circumstances exist which render such a preference inexpedient.

In cases of applications for a provisional order, to which objection is made by any person locally interested, the Board of Trade will, if they consider it expedient, hold a local inquiry, of which due notice will be given.

These rules are in addition to any requirements relating to applications for provisional orders which are contained in the Standing Orders of Parliament.

SCHEDULE REFERRED TO IN RULE V.

FORM OF NOTICE TO LANDOWNERS AND OTHERS.

(*Insert Title of Order.*)

SIR,

WE beg to inform you that application is intended to be made to the Board of Trade for a Provisional Order under the Electric Lighting Acts, 1882 to 1909, and under the above-named short title, and that the property mentioned in the annexed schedule or some part thereof, in which we understand you are interested as therein stated, will be liable to be taken compulsorily for the purposes of a generating station.

We also beg to inform you that a plan of the said land with a book of reference thereto have been or will be deposited on or before the 30th November, for public inspection at the office of [specify the office (*if in England or Ireland*) of the clerk of the peace for the county, riding or division and of the local authority of the district (*if in Scotland*) of the sheriff clerk for the county, of the sheriff clerk for the district (if any) and of the local authority of the district] on which plan your property is designated by the numbers in the annexed schedule.

If there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

If you desire to bring before the Board of Trade any objection respecting the said application, you must do so by letter addressed to the Board of Trade marked on the outside of the cover enclosing it " Electric Lighting Acts " on or before the 15th day of January next, and a copy of the objection must be furnished to us.

We are, &c.,

Schedule referred to in the foregoing notice describing the property therein alluded to :—

Description of Property.	Number on Plan.	Owner.	Lessee.	Occupier.

THE PUBLIC WORKS LOANS ACT, 1882.

(45 & 46 VICT. c. 62.) (*t*)

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and for other purposes relating to Loans by those Commissioners. [18th August 1882.]

1. This Act may be cited as " The Public Works Loans Act, 1882." Short title.

2. This Act may be cited, together with the Public Works Loans Act, 1875, and the Public Works Loans Act, 1879 (*u*), as the Public Works Loans Acts, 1879 to 1882. Citation of Acts. 38 & 39 Vict. c. 89. 42 & 43 Vict. c. 77.

PART I.

GRANT OF MONEY FOR PUBLIC WORKS LOAN COMMISSIONERS DURING THE PERIOD ENDING JUNE 30TH, 1883.

* * * * *

PART II.

GRANT OF MONEY FOR PUBLIC WORKS COMMISSIONERS, IRELAND.

* * * * *

(*t*) See the Public Works Loans Act, 1875, *ante*, p. 1608.
(*u*) *Ante*, p. 1697.

PART III.

GRANT OF MONEY FOR IRISH LAND COMMISSION.

* * * * *

PART IV.

AMENDMENT OF ACTS.

Amendment of 24 & 25 Vict. c. 45, as to provision for loans in Provisional Order respecting harbours.

7. (*x*) . . .

(1) Where a Provisional Order under the General Pier and Harbour Act, 1861, authorises any public body to raise a loan for the construction of any works as defined by that Act in any place, the same or any other order may authorise any rating authority as hereinafter defined in that place, under the circumstances and subject to the conditions specified in the order, to charge, if they think it expedient for the inhabitants at large of such place, any fund or rate under their control for the purpose of aiding the public body in raising the said loan, or any part thereof, from the Public Works Loan Commissioners, and to give such aid by guaranteeing the principal and interest of the loan or by borrowing the sum required and advancing it to the public body, or partly in one way and partly in the other, or otherwise in manner provided by the order.

(2) The order shall provide that the resolution of the rating authority to give the guarantee shall be a special resolution, that is to say, a resolution passed at one meeting of such authority and published in manner directed by the order, so as to give notice to all persons interested, and confirmed at a second meeting of the rating authority held not less than fourteen days after the first of such public notices has been given, and not less than three months after the meeting at which the resolution was passed.

(3) The order shall provide for the time within which and the mode in which any money borrowed by the rating authority is to be repaid, and for the effectual recovery out of the said fund or rate of any sum payable under the guarantee, and of the principal and interest of any money borrowed by the said authority, and for the reimbursement of the fund or rate out of the income of the said works, or otherwise by the said public body, and shall contain such incidental provisions as seem necessary or proper for carrying this section into effect.

(4) The promoters of an order proposing to confer power under this section on any rating authority shall, a reasonable time before they apply to the Board of Trade to settle the order, submit to the Local Government Board . . . a statement of such proposal, and if the Local Government Board . . . declare that in their opinion, having regard to the financial condition of the rating authority, or to the necessity for such rating authority to provide a water supply or drainage for the inhabitants of the said place, or otherwise to fulfil the original duties of such authority, it is inexpedient to burden such rating authority with any such charge as is mentioned in such proposal, the Board of Trade in settling the order shall omit any provision conferring power on the rating authority under this section (*y*).

In this section—

The expression " public body " means any rating authority, also any commissioners, or trustees, or other body or person who manage or

(*x*) The preamble to this section is repealed by the S. L. R. A., 1898.
(*y*) Words relating to Scotland only are omitted from this sub-section.

undertake the works without any view to the payment of any dividend or profits out of the revenue from such works :

The expression " rating authority " means—

(1) As regards England, any authority being an urban sanitary authority under the Public Health Act, 1875 (*z*), and the Acts amending the same ; and (*a*) 38 & 39 Vict. c. 55.

. . . . .

8. Where after the passing of this Act any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the said advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account (*b*), and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made (*c*). Account in case of loan on security of rate. 38 & 39 Vict. c. 89.

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THE LANDS CLAUSES (UMPIRE) ACT, 1883.

(46 & 47 VICT. c. 15.)

An Act to amend the Lands Clauses Consolidation Act, 1845.
[18th June 1883.]

1. . . . section twenty-eight of the Lands Clauses Consolidation Act, 1845 (*d*), shall be read and have effect as follows : Amendment of s. 28 of 8 Vict. c. 18, extending the power of appointment of umpire by Board of Trade.

28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

2. This Act may be cited as the Lands Clauses (Umpire) Act, 1883. Short title.

(*z*) See s. 6 of that Act, *ante*, p. 1609. This definition is extended by the Public Works Loans Act, 1887, s. 4, *post*, p. 1805, to rural sanitary authorities, quarter sessions, and county councils.

(*a*) The remainder of this section relates to Scotland and Ireland only, and is, therefore, omitted.

(*b*) This prevents any such order from being a bill of exchange within the meaning of the Bills of Exchange Act, 1882. See s. 3 (3) of that Act.

(*c*) Section 13 repealed the Public Works Loans Act, 1875, s. 13, and the Public Works Loans (Ireland) Act, 1877, s. 11, and is itself repealed by the S. L. R. A., 1898. Section 10 relates to Ireland only, and s. 11 makes provision with regard to certain local loans, and are therefore omitted.

(*d*) See th at section, *ante*, p. 1329. This Act is printed having regard to the repeals in s. 1 effected by the S. L. R. A., 1898.

THE SUMMARY JURISDICTION ACT, 1884.

(47 & 48 VICT. c. 43.) (*e*)

An Act to repeal divers Enactments rendered unnecessary by the Summary Jurisdiction Acts and other Acts relating to Proceedings before Courts of Summary Jurisdiction, and to make further provision for the uniformity of Proceedings before those Courts. [7th August 1884.]

Short title.

1. This Act may be cited as the Summary Jurisdiction Act, 1884.

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Recovery of payments certified by district auditors. 7 & 8 Vict. c. 101.

11. The payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment Act, 1844, and the Acts amending the same, or with any other Act, may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate.

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THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

(47 & 48 VICT. c. 70.) (*f*)

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections. [14th August 1884.]

Short title.

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

(*e*) Section 11 of this Act here set out is supplemental to s. 247 of the P. H. A., 1875, *ante*, p. 541. The remedy hereby provided appears to be alternative to and not in substitution for the remedy provided by the Poor Law Amendment Act, 1844, s. 32, *ante*, p. 1308, incorporating the Poor Law Amendment Act, 1834, s. 99. The payment of sums due in respect of the poor rate is enforced likewise by warrant of distress under the hands of two justices under s. 2 of the Poor Relief Act, 1601, and in default of distress by imprisonment for a term not exceeding three months under s. 2 of the Distress for Rates Act, 1849. But there would seem to be certain points of difference between the old procedure for enforcing auditors' certificates and the procedure under this Act which are worthy of observation. They are as follows :

1. It is doubtful whether the limitation of time for taking proceedings prescribed by 12 & 13 Vict. c. 103, s. 9, *ante*, p. 1476, is applicable to proceedings under this Act. If not, there is no limit.

2. There may be a question whether the last-mentioned section is applicable to proceedings under this Act. Probably it would be held to be so if ever the question arises for decision.

3. The provisions of 7 & 8 Vict. c. 101, s. 70, as to compelling witnesses to attend and give evidence, do not extend to proceedings under this Act. But they can, if necessary, be compelled to attend and give evidence and produce documents, by means of a Crown Office *subpœna* (see *R.* v. *Greenaway* (1847), 7 Q. B. 126 ; 9 J. P. 837).

4. Commitment in default of distress under 7 & 8 Vict. c. 101, s. 32, and 4 & 5 Will. 4, c. 76, s. 99, is apparently compulsory, but under this Act and 12 & 13 Vict. c. 14, s. 2, merely discretionary.

5. The distress warrant under 7 & 8 Vict. c. 101, s. 32, and 4 & 5 Will. 4, c. 76, s. 99, is properly handed to the police for execution, but a distress warrant under this Act is properly handed to the complainant, who may execute it by deputy, and it may be indorsed for execution beyond the jurisdiction under 17 Geo. 2, c. 38, s. 7, and 54 Geo. 3, c. 170, s. 12, which do not seem applicable to the other kind of warrant. Moreover, a bill of sale is no protection against a warrant under this Act (see 45 & 46 Vict. c. 43, s. 14).

6. Under 7 & 8 Vict. c. 101, s. 32, and 4 & 5 Will. 4, c. 76, s. 99, the defendant may be detained until return to the warrant of distress, unless he gives security for his re-appearance, but there is no similar power under this Act.

(*f*) This statute applies to elections of urban district councillors for districts not being municipal boroughs and of rural district councillors under s. 48 (3) of the L. G. A., 1894,

CORRUPT PRACTICES.

2.—(1) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation (*g*).

Definition and punishment of corrupt practices at municipal election.

(2) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election (*h*).

3.—(1) Where upon the trial of an election petition (*i*) respecting a municipal election (*k*) for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal

Incapacity of candidate reported guilty of corrupt practice. 45 & 46 Vict. c. 50.

ante, p. 1033. It is, therefore, set out here. The notes, of course, have reference only to the application of the Acts to elections of sanitary bodies, such as councillors for urban districts not being bòroughs, and of rural district councils. For an amending Act of 1911, see *post*, p. 2136.

(*g*) This provision takes the place of a repealed clause in s. 77 of the Municipal Corporations Act, 1882. The offence of aiding, etc. the commission of the offence of personation is new. See further the *East Kerry Case* (1910), 6 O'M. & H. 58.

(*h*) By the Corrupt and Illegal Practices Prevention Act, 1883, s. 6, corrupt practices other than personation, or aiding, etc. in the commission of personation, are declared to be misdemeanors, and any person convicted of any of them is liable to be imprisoned, with or without hard labour, for a term not exceeding two years, or to be fined any sum not exceeding £200. A person who commits the offence of personation or of aiding, etc. the commission of that offence, is guilty of felony, and liable on conviction to be imprisoned, with or without hard labour, for a period not exceeding two years. In addition to these punishments, a person who is convicted on indictment of any corrupt practices shall not be capable for a period of seven years from the date of his conviction (a) of being registered as an elector or voting at any election in the United Kingdom whether it be a parliamentary election or an election for any public office (see *infra*); or (b) of holding any public or judicial office (see *infra*), and if he holds any such office the office shall be vacated. Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction. By s. 64, the expression "public office" means any office under the Crown or under the charter of a city or a municipal borough, or under the Acts relating to municipal corporations, or to the poor law, or under the Elementary Education Act, 1870, or under the P. H. A., 1875, or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office to which a person is elected and appointed under any such charter or Act as above mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly. The expression "judicial office" includes the office of justice of the peace and revising barrister.

As to the form of indictment for corrupt practices, see *R.* v. *Stroulger* (1886), 17 Q. B. D. 327; 51 J. P. 278.

Each act of bribery is a distinct offence for which separate penalties are incurred (*Milnes* v. *Bale* (1875), L. R. 10 C. P. 327; 39 J. P. 743).

(*i*) As to election petitions in respect of corrupt practices, see the Municipal Corporations Act, 1882, s. 87, *ante*, p. 1709; and in respect of illegal practices, see s. 25 of this Act, *post*, p. 1776. For the application of these sections to elections of urban district councillors for districts not being boroughs and of rural district councillors, see s. 36, *post*, p. 1782.

(*k*) This includes for the purposes of this Work, the election of urban district councillors for districts not being boroughs and of rural district councillors. See s. 36, *post*, and the Urban District Councillors Election Order, 1898, and Rural District Councillors Election Order, 1898, in App. II., *post*, pp. 2302, 2330.

Corporations Act, 1882 (*l*), that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office (*m*) in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice (*n*).

(2) Upon the trial of an election petition (*o*) respecting a municipal election (*p*) for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office (*m*), in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

ILLEGAL PRACTICES. (*q*)

Certain expenditure to be illegal practice.

4.—(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(a) on account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

(b) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(c) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward (*r*), and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2) Subject to such exception as may be allowed in pursuance of this Act,

(*l*) *Ante*, p. 1712.

(*m*) This means the office of an urban or rural district councillor, as the case may be. See s. 36, *post*, p. 1782, and the Urban District Councillors Election Order, 1898, and Rural District Councillors Election Order, 1898, in App. II., *post*, pp. 2302, 2330. But where he is guilty of a corrupt practice by his agents only and not personally, he is not deprived of his right to vote at a parliamentary election (*Morris* v. *Shrewsbury Town Clerk*, [1909] 1 K. B. 342; 73 J. P. 28).

(*n*) These incapacities are set forth in note (*h*), *ante*, p. 1765. A single act of bribery by an agent will render an election void (*Norwich Election Petition* (1886), 54 L. T. 625; 4 O'M. & H. 84).

(*o*) See note (*i*), *ante*, p. 1765.

(*p*) See note (*k*), *ante*, p. 1765.

(*q*) The Act must be "taken to be amended as if the illegal practice defined by" the amending Act of 1911 "had been contained therein." The illegal practice referred to (see the Act, *post*, p. 2136) is the making or publishing of certain false statements with regard to a candidate.

(*r*) In applying this clause to elections of urban district councillors for districts not being boroughs, the word *borough* or *ward* must be read to mean *urban district* or *ward of such district*, or *parish* or *united parishes* in the case of elections of rural district councillors (s. 36 (1) (a), *post*, p. 1782).

if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election (*s*), the person making such payment or contract shall be guilty of an illegal practice, and any person (*t*) receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section (*u*).

5. [*Expense in excess of maximum to be illegal practice.*] (*v*)

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

6.—(1) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice (*x*).

(2) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent (*y*).

Punishment on conviction of illegal practice.

7. A person guilty of an illegal practice in reference to a municipal election shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at an election (whether it be a parliamentary election or an election for a public office (*z*) within the meaning of this Act) held for or within the borough (*a*) in which the illegal practice has been committed.

Incapacity of candidate reported guilty of illegal practice. 45 & 46 Vict. c. 50.

8.—(1) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882 (*b*), and a petition alleging such illegal practice may be presented and tried accordingly.

(2) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough (*a*) in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the

(*s*) See note (*k*), *ante*, p. 1765.

(*t*) The word *person* here is presumed to mean elector in cases falling within clause (b), as it does not appear to be illegal to make payments such as those mentioned in that clause to any person other than an elector.

(*u*) This proviso qualifies the provisions of clause (b).

(*v*) This section cannot apply to elections of urban district councillors for districts not being boroughs or of rural district councillors. See s. 37, *post*, p. 1783.

(*x*) As to the persons prohibited from voting by this Act, see ss. 7, 8, 13, 18, 22, 23, and Sched. III., Part II., *post*. As to persons prohibited from voting by reason of the receipt of relief, see *ante*, p. 1022. A convicted felon is disqualified to vote at any election until he has undergone his punishment or been pardoned (33 & 34 Vict. c. 23, s. 1).

(*y*) But *quære*, if the illegal practice has been committed by his agents. It would appear from s. 8 (2), *infra*, that the election would be avoided in that event.

(*z*) As to what is a public office, see note (*h*), *ante*, p. 1765.

(*a*) See note (*r*), *ante*, p. 1766.

(*b*) This part of the Municipal Corporations Act, 1882, is set out, *ante*, p. 1708.

candidates at such election has been guilty by himself or his agents (*c*) of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents (*c*) of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office (*d*) in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void ; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice (*e*).

ILLEGAL PAYMENT, EMPLOYMENT, AND HIRING.

Providing of money for illegal practice or payment to be illegal payment.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, *or for any expenses incurred in excess of any maximum amount allowed by this Act* (*f*), or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception (*g*), such person shall be guilty of illegal payment (*h*).

Employment of hackney carriages, or of carriages and horses kept for hire (*i*).

10.—(1) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does do so he shall be guilty of illegal hiring.

(3) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

Corrupt withdrawal from a candidature.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election (*k*), in consideration of any payment or promise of payment (*l*), shall be guilty of illegal payment,

(*c*) But in the case of the illegal practice defined by the amending Act of 1911, *post*, p. 2136, a candidate is not necessarily to be held responsible for the act of his agent : see s. 1 (4).

(*d*) See note (*h*), *ante*, p. 1765.

(*e*) These incapacities are stated in s. 7, *supra*.

(*f*) The provisions of this Act as to maximum expenses do not apply to elections of urban district councillors for districts not being boroughs, or of rural district councillors. See s. 37, *post*, p. 1783.

(*g*) See ss. 19, 20, *post*, pp. 1771, 1772.

(*h*) Employment for payment of persons to keep order at meetings is an illegal employment (*Packard* v. *Collings* (1886), 54 L. T. 619). Gratuitous refreshments to workers render their employment illegal within this section (*Barrow Election Petition* (1886), 54 L. T. 618).

(*i*) See the *Hartlepools Case* (1910), 6 O'M. & H. 1.

(*k*) See note (*h*) to s. 2, *ante*, p. 1765.

(*l*) Note that the consideration must be payment or promise of payment. Withdrawal for other considerations is not within this section. By s. 34, *post*, p. 1782, and s. 64 of the

and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

12.—(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction (*m*). Certain expenditure to be illegal payment.

(2) Subject to such exception as may be allowed in pursuance of this Act (*n*), if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment, if he knew that the same was made contrary to law (*o*).

13.—(1) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment, or promise of payment for any purpose or in any capacity whatever (*p*), except as follows (that is to say), Certain employment to be illegal.

(a) a number of persons may be employed, not exceeding two for a borough or ward (*q*), and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(b) one polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract bonâ fide made with any person in the ordinary course of business (*r*).

(2) Subject to such exception as may be allowed in pursuance of this Act (*s*), if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment (*s*), and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act (*n*).

(3) A person legally employed for payment under this section may or may not be an elector, but may not vote.

14. Every bill, placard, or poster having reference to a municipal election (*t*) shall bear upon the face thereof the name and address of the printer and Name and address of printer on placards.

Corrupt and Illegal Practices Prevention Act, 1883, therein referred to, the expression "payment" includes any pecuniary or other reward, and the expressions "pecuniary reward" and "money" include any office, place or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money must be construed accordingly.

(*m*) Cards to be worn in voters' hats bearing a likeness of the candidate and an invitation to vote for him, are marks of distinction within the meaning of this section (*Walsall* (1892), 4 O'M. & H. 126).

(*n*) See ss. 19, 20, *post*, pp. 1771, 1772.

(*o*) Note that ignorance of the law will not be an excuse for the party paying.

(*p*) *E.g.*, an election agent (*Ex parte Walker* (1889), 22 Q. B. D. 384; 53 J. P. 260). Note, that under the General Orders of the L. G. B., dated January 1st, 1898, relating to elections of urban and rural district councillors (see App. II., *post*), so much of this section as permits one polling agent to be employed in each polling station does not apply, except so far as the employment of polling agents is permitted under the respective rules of such orders relating to polling agents.

(*q*) See note (*q*) to s. 4, *ante*, p. 1766.

(*r*) This appears to be intended to meet the case of a person who contracts for the purposes of the election, *e.g.*, for printing. The employees of such persons are not to be deemed to be employed within the meaning of this section.

(*s*) Note that ignorance of the law will not be an excuse for the party employing.

(*t*) See note (*h*) to s. 2, *ante*, p. 1765.

publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds (*u*).

Saving for creditors.

15. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act (*x*).

Use of certain premises for committee rooms or meetings to be illegal hiring.

16.—(1) (a) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises (*y*), or

(*u*) The appellant was a candidate for a seat on a local board. The respondent received from his own servant at his residence a printed address and letter having reference to the election, and purporting to be signed by the appellant, but having no printer's name thereon. This document was printed for publication by instructions conveyed to the printer in a letter from the appellant's brother, who resided with him. The printer debited the appellant with the cost of printing, but was not paid :—*Held*, on these facts, that there was no evidence that the appellant had "printed or caused to be printed" the document in question. Placards or posters also without the printer's name and address printed by the instructions of one E., who was advertised in a local newspaper as chairman of a committee for promoting the election of the appellant, and who sent the copy to the printer, were proved to have been posted about the district at E.'s expense. The court doubted whether this was evidence of the printing and posting by an agent of the appellant, but the justices having convicted the appellant in one penalty for both offences, and the conviction being bad as to the first :—*Held*, that it was bad altogether (*Bettesworth* v. *Allingham* (1886), 16 Q. B. D. 44; 50 J. P. 55).

In the above case the court seemed to assume that a circular containing an election address was a bill, placard, or poster within the meaning of the section. In some cases which came before the courts subsequently, it was held that such a circular was not a bill, placard, or poster. See *per* Lord COLERIDGE, C.J., and MANISTY, J., in the cases reported in 5 T. L. R. 160; and *per* FRY, L.J., and MANISTY, J., *ibid.*, 170. In other cases, however, the court granted relief under s. 20 (*e.g.*, *Ex parte Bartlett*, Times, October 30th, 1900), so that the point is still in doubt.

In *Alcott* v. *Emden* (1904), 68 J. P. 434; 20 T. L. R. 487, it was held that a circular sent out in August with reference to the possible candidature in November of a certain alderman for the office of mayor, such circular being headed "Shall he be our new mayor ?" and six copies marked private being sent in sealed envelopes to certain persons interested in the election, was a bill with reference to a municipal election within the meaning of this section and should have borne the printer's name and address.

The name and address of the publisher must appear as well as those of the printer if they are different persons. It has not yet been expressly decided whether a candidate is liable to penalties under this section if he publishes a placard, etc. on which his name and address appear, but which does not explicitly describe him as the publisher; but in the year 1889 the High Court excused a number of candidates in respect of such omissions.

A person other than a candidate is not by this section declared to be guilty of an illegal practice, payment, employment, or hiring. He cannot, therefore, be excused under s. 20 (*Ex parte Lenanton* (1889), 53 J. P. 263).

(*x*) Hence in the case of an expense incurred in contravention of the Act, the illegality of the expense will be no defence to an action by a creditor who, when the expense was incurred, was ignorant of its being in contravention of the Act. This provision is necessary for the protection of creditors who have no means of knowing what other expenses have been incurred by a candidate. The provisions of the Act as to maximum expenses do not, however, apply to elections of district councillors for urban districts not being boroughs or of rural district councillors. See s. 37, *post*, p. 1783. See ss. 19, 20, *post*.

(*y*) It should be noticed that this section applies to any premises on which refreshment is sold for consumption on the premises, or on which liquor is sold, whether for consumption on or off the premises. It applies even where the door of communication between the part used for the election and the part used for the sale of intoxicating liquors is kept locked (*Ex parte Payne*, Times, November 2nd, 1894). Thus a place where sandwiches are sold

(b) Any premises where any intoxicating liquor is supplied to members of a club, society or association, or any part of any such premises, shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

17.—(1) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds. Punishment of illegal payment, employment, or hiring.

(2) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice (*z*).

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed (*a*) that they may be reasonably supposed to have affected the result of that election (*b*), the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office (*c*) in the said borough. Avoidance of election for extensive illegal practices, etc.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences (*d*), in reference to such election, Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

for consumption at the counter was in one case which came before the court in 1889 held to be within this provision; but the section does not apply to a club unless liquor is supplied in it.

Note, that under the Rural District Councillors Election Order, 1898, in App. II., *post*, p. 2337, r. 26 (7), nothing in this Act shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to the office of rural district councillor on any licensed or other premises not situate in an urban district or in the administrative county of London.

(*z*) And punishable as provided by s. 7, *ante*, p. 1767.

(*a*) Note that this section may apply, although the practices in question have been committed by persons other than the candidate or his agents; but in such a case the candidate could protect himself under ss. 19, 20.

(*b*) See also s. 1 (4) of the amending Act of 1911, *post*, p. 2137.

(*c*) See note (*h*) to s. 2, *ante*, p. 1765.

(*d*) Note that the offences of bribery, personation, and aiding and abetting in the commission of personation are not included here.

and the election court further report that the candidate has proved to the court—

(a) that no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate (*e*); and

(b) that all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(c) that the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

Power of High Court and election court to except innocent act from being illegal practice, etc.

20. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the court sufficient—

(a) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring (*f*); and

(b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(c) that such notice of the application has been given in the said borough as to the court seems fit;

and under the circumstances it seems to the court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission (*g*).

(*e*) See (*b*), *ante*, p. 1771.

(*f*) Note that corrupt practices are not mentioned here.

(*g*) Relief may be given under this section by the High Court, on application for that purpose, or by an election court. As to the election court, see s. 92 of the Municipal Corporations Act, 1882, *ante*, p. 1712.

From the refusal of the High Court to grant relief under this section appeal lies to the Court of Appeal. See *Ex parte Walker* (1889), 22 Q. B. D. 384; 53 J. P. 261. See also *Ex parte Thomas* (1889), 60 L. T. 728; 5 T. L. R. 234; *Ex parte Birtwhistle* (1889), 5 T. L. R. 321.

In order to support an application under this section, it will not be sufficient that notice of intention to make the application has been advertised in the local papers, but such notice should be published in such a manner as will ensure a reasonable certainty that persons interested had notice; and it will also be insufficient if the affidavits upon which the application is made merely state that the act in respect of which the relief is sought arose from inadvertence, and not from any want of good faith, without showing some reasonable excuse for such inadvertence (*Ex parte Perry* (1884), 48 J. P. 824). In the cases which came before the court in 1889 it was laid down that "inadvertence" meant negligence or carelessness where the circumstances showed an absence of bad faith. The court also required notice to be given to the opposing candidates and to the returning officer. The court also required that notices should be posted up throughout the district, and advertised in the local papers, that application would be made for relief. Notice need not, however, be given to the Attorney-General (*Ex parte Lenanton* (1889), 53 J. P. 263; 5 T. L. R. 173). Where an application for relief under similar circumstances is made by

21. (*h*)—(1) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election (*i*) shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice (*j*), but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

Sending in claims and making payments for election expenses.

(2) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect

several candidates, a joint affidavit of the facts upon which the application is based ought to be made by all the applicants (*Re Andrews* (*Streatham Vestry Election*) (1899), 68 L. J. Q. B. 283).

There have been numerous applications to the High Court for excuse under this section, especially in the beginning of the year 1889, with reference to the first elections of county councillors. These cases will be found reported in 5 T. L. R., pp. 173, 183, 195, 198, 203, 206, 220, and 272. They must not, however, be regarded as precedents, for the court granted relief almost as a matter of course where it was shown that the applicant had acted in ignorance of the law, but at the same time expressed an opinion that such an excuse would not afterwards be accepted. See the observations in *Ex parte Darlington* (1889), 53 J. P. 71 ; *Ex parte Lenanton, supra.* Since then see *Ex parte Payne*, Times, November 2nd, 1894 ; *Ex parte Hughes*, Times, November 24th, 1900.

Among the cases reported before 1889 may be mentioned the following : *Ex parte Clark* (1884), 52 L. T. 260, where placards had been issued without the printer's name ; *Ex parte Perry* (1884), 48 J. P. 824, where a room in a club had been used contrary to s. 16 ; *South Shropshire Election* (1886), 2 T. L. R. 347, where payments were made after the proper time (and see *Ipswich Election* (1887), 3 T. L. R. 397) ; *Ex parte Robson* (1887), 18 Q. B. D. 336 ; 51 J. P. 199, where a candidate who had incurred no expenses was allowed to make a return and declaration under s. 21 after the prescribed time ; *Ex parte Matthews* (1886), 2 T. L. R. 548, where a candidate had acted as his own agent, and had omitted to make a declaration of expenses. In the case of *Essex* (*South-West Division*) *Election* (1886), 2 T. L. R. 388, where a person voted, and afterwards accepted payment for services rendered as an agent, the court refused to relieve him. *Ex parte Robson, supra,* was followed in *Ex parte Pennington* (1898), 46 W. R. 415.

In *Ex parte Gale* (1905), 69 J. P. 281, the candidate had postcards printed and issued, asking for the support of the electors, in ignorance that this was an illegal expense under s. 5 of the Act of 1884. He was relieved under this section.

Where a person had obtained an excuse for a late return of expenses, and subsequently on the same day, but after the order had been drawn up, a voter appeared to oppose the application, it was held that the application of the voter must be dismissed in the absence of any sufficient explanation of the delay (*Wigan Election* (1886), 2 T. L. R. 159).

If the application is made by a person against whom a petition is pending, the court will order the application to stand over till after the trial of the petition (*Ex parte Wilks* (1886), 16 Q. B. D. 114 ; 50 J. P. 487 ; *Ex parte Evans* (1889), 5 T. L. R. 207). But this course will not be followed merely because a petition is threatened (*Ex parte Stephens* (1889), *ibid.*, 203). Even where a petition is pending, if the facts are not in dispute and the subject-matter of the application for relief was the sole ground of the petition, the application will be dealt with immediately (*Ex parte Forster* (1903), 67 J. P. 322 ; 89 L. T. 18).

Relief will not be granted to a successful candidate unless he satisfies the court that the illegal practice cannot have affected the result of the election (*Re Droitwich Borough* (*Election of Auditors*) (1907), 71 J. P. 236 ; 23 T. L. R. 372).

(*h*) This section does not apply to elections of urban district councillors for districts not being boroughs or of rural district councillors. See s. 37, *post*, p. 1783.

(*i*) Money paid by an agent of a candidate for the employment of persons to keep order at meetings connected with the election is within this provision (*Packard* v. *Collings* (1886), 54 L. T. 619).

(*j*) And therefore punishable as provided by s. 7, *ante*, p. 1767.

of the conduct or management of such election, and if he fails to do so shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk (*k*) a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect.

(4) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same (*l*).

(5) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice (*m*), and if he knowingly makes the said declaration falsely he shall be guilty of an offence, (*n*) . . . . and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(6) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk (*o*).

(7) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just (*p*).

(*k*) This return and declaration must be made even in the case of an unopposed election, when the candidate has incurred no expenses. In such a case, however, the court granted relief under s. 20, *ante*, p. 1772 (*Ex parte Robson*, *ante*; *Ex parte Pennington*, *ante*). If the return is posted to the town clerk within the twenty-eight days, it is sufficient, although it does not reach him until after the expiration of that time (*Mackinnon* v. *Clark*, [1898] 2 Q. B. 251).

(*l*) Note that any person may sue. The Crown cannot remit the penalties. See *Todd* v. *Robinson*, *ante*, p. 457.

(*m*) See note (*j*), *ante*, p. 1773.

(*n*) Some words were repealed by the Perjury Act, 1911.

(*o*) Notice of application to the court must probably be given to the other candidates, to the returning officer, and to the public by advertisements (*Re Ludlow Election* (1886), 54 L. T. 129; 34 W. R. 352). An application for leave to pay the hire of a brougham used without authority by the clerk of a candidate was refused in *Re Chelsea Election* (1886), 2 T. L. R. 374).

For procedure in the county court, see County Court Rules, Order L., r. 16. Note that the county court is not mentioned in sub-ss. (7), (8), but it would probably be guided by them.

(*p*) The illness of an agent was accepted as an excuse in *Re Ipswich Election* (1887), 3 T. L. R. 397.

(8) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person (*q*) on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

Disqualification of Electors.

Prohibition of persons guilty of offences from voting.

22. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election (*r*) is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

Application of ss. 37 and 38 of 46 & 47 Vict. c. 51.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part Two of the Third Schedule to this Act, shall apply as part of this Act.

List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.

24.—(1) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which the said borough is situate.

(3) The town clerk of any municipal borough shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add " objected "

(*q*) Any person, not any person interested.
(*r*) See note (*h*) to s. 2, *ante*, p. 1765.

before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5) The revising authority shall determine such claims and objections and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the same is printed or published.

(9) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned.

45 & 46 Vict. c. 50.

PROCEEDINGS ON ELECTION PETITIONS.

Petition for illegal practice

25.—(1) A municipal election petition complaining of the election on the ground of an illegal practice (*s*) may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse (*t*).

Time for presentation of petition alleging illegal practices.

(2) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

(*s*) A petition may be presented for a corrupt practice under the Municipal Corporations Act, 1882, s. 87, *ante*, p. 1709.

(*t*) Under the Urban District Councillors Election Order, 1898, and Rural District Councillors Election Order, 1898 (App. II., *post*, pp. 2302, 2330), an election petition complaining of the election of an urban or rural district councillor on the ground of an illegal practice, may be presented at any time within six weeks after the day of election.

(3) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented (*u*). 45 & 46 Vict. c. 50.

(4) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

26. (*x*)—(1) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do. Withdrawal of election petition.

(2) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General) in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant, or other representative may consider material.

(6) Where in the opinion of the court the proposed withdrawal of a petition is the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration (*y*). 45 & 46 Vict. c. 50.

(7) In every case of the withdrawal of an election petition, by leave of the election court such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated,

(*u*) A judge who is not on the rota for the trial of parliamentary election petitions cannot make an order giving leave to amend under this section. Such an order ought not to be made *ex parte* (*Shaw* v. *Reckitt*, [1893] 1 Q. B. 779). That question being a question of law, no appeal lies to the Court of Appeal from a decision of a Divisional Court thereon without leave of the Divisional Court (*Shaw* v. *Reckitt*, [1893] 2 Q. B. 59; 57 J. P. 805).

(*x*) See also the Municipal Corporations Act, 1882, s. 95, *ante*, p. 1714.

(*y*) See this section, *ante*, p. 1714.

or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

Continuation of trial of election petition.

27. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued de die in diem on every lawful day until its conclusion.

Attendance of Director of Public Prosecutions on trial of election petition, and prosecution by him of offenders.

28.—(1) On every trial of a municipal election petition the Director of Public Prosecutions shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity (*z*) and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that in case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence (*a*); and in either case may order

(*z*) See the Municipal Corporations Act, 1882, s. 92, *ante*, p. 1712.

(*a*) The evidence which is to satisfy the court before it makes the order means the evidence given during the trial of the petition, and, therefore, a commissioner for the trial of municipal election petitions acted within his jurisdiction in ordering the prosecution of a person to whom he had refused a certificate of indemnity, and who did not appear, without re-hearing the evidence affecting him, and also acted within his jurisdiction in issuing a summons under sub-s. (6), *post*, for his attendance before a court of summary jurisdiction,

him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6) Upon such order being made,

(a) If the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear, and take his trial for the said offence; and

(b) If the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(c) If the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882 (*b*). 45 & 46 Vict. c. 50.

(8) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9) The costs incurred in defraying the expenses of the Director of Public Prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid 45 & 46 Vict. c. 50.

for the purpose of being formally committed for trial (*R.* v. *Shellard* (1889), 23 Q. B. D. 273; 53 J. P. 821). The commissioner for the trial of municipal election petitions ordered certain persons, prosecuted before him for a corrupt practice committed at a municipal election in Nottingham, to be prosecuted on indictment for the offence at the ensuing assizes at Derby:—*Held*, that the commissioner had jurisdiction to order the trial at Derby; that his order was sufficient without describing the corrupt practice; that the Derbyshire grand jury could find, and the judge of assize had jurisdiction to try, the indictment; that "Derbyshire, to wit," in the margin of the indictment was sufficient, although the body of it disclosed offences in Nottingham only; that the words "a corrupt practice," in the commissioner's order, were reasonably interpreted "some corrupt practice," and that the prosecution were not precluded from preferring a number of charges of bribery in the indictment (*R.* v. *Ripley*; *R.* v. *Campion* (1891), 59 L. J. M. C. 122; 55 J. P. 21).

(*b*) *Ante*, p. 1712.

to the Treasury by the parties to the petition, or such of them as the court may direct (*c*).

Power to election court to order payment by borough or individual of costs of election petition.

29.—(1) Where upon the trial of a municipal election petition it appears to the election court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows:

(a) If it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough (*d*); and

(b) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them (*e*), and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct (*e*).

(3) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause or matter in the Higher Court on the higher scale, as between solicitor and client.

45 & 46 Vict. c. 50.

MISCELLANEOUS.

General provisions as to prosecution of offences under this Act.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of Public Prosecutions in relation to any such offence, and all other proceedings in relation

(*c*) If a petition is utterly unfounded the petitioner may be ordered to pay the costs of the Director of Public Prosecutions (*Kennington Election Petition* (1886), 54 L. T. 628). This section applies only to the trial of a petition. The costs of the Public Prosecutor cannot be ordered where the petition is withdrawn (*Pascoe* v. *Puleston* (*Devonport Election Petition*) (1886), 50 J. P. 135; 54 L. T. 733).

(*d*) That is, by the urban district council for a district not being a borough, or by the rural district council (s. 36, *post*, p. 1782).

(*e*) As to the recovery of these costs, see s. 32, *post*, p. 1781.

thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly (*f*) as if they were re-enacted in this Act with the necessary modifications, and with the following additions: 46 & 47 Vict. c. 51.

(a) Where the Director of Public Prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough (*g*), he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

(b) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections (*h*); and 45 & 46 Vict. c. 50.

(c) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive. Section 94 (7).

31. If any person in consequence of conviction or of the report of an election court under this Act becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office (*i*), and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date. Person incapacitated by conviction or report to vacate seat or office.

32.—(1) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate (*k*). Payment and recovery of costs.

(2) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to her Majesty, and in either case may be recovered accordingly.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough (*l*), whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of Service of notices.

(*f*) Therefore, where a private prosecutor prefers an indictment charging the commission of a corrupt practice the defendant, if acquitted, is entitled to recover from the prosecutor the costs sustained by reason of the indictment (*R.* v. *Law*, [1900] 1 Q. B. 605).

(*g*) See s. 36, *post*, p. 1782.

(*h*) That is, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can be made. See the Corrupt and Illegal Practices Prevention Act, 1883, s. 56.

(*i*) See *ante*, p. 1765, s. 2, note (*h*).

(*k*) That is, out of the general district rate or other rate out of which the expenses of the urban district council for a district not being a borough, or of the rural district council, are payable (s. 36, *post*).

(*l*) See s. 4, note (*r*), *ante*, p. 1766.

abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed and registered with the post office.

Definitions. 45 & 46 Vict. c. 50. 46 & 47 Vict. c. 51.

34. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll (*m*).

35. [*Application to City of London of Act and of Part IV. of* 45 *&* 46 *Vict. c.* 50.]

APPLICATION OF ACT TO OTHER ELECTIONS.

Application of this Act and Part IV. of 45 & 46 Vict. c. 50, to other elections.

36.—(1) Subject as hereinafter mentioned, the provisions of this Act and of Part Four of the Municipal Corporations Act, 1882 (*n*), as amended by this Act, shall extend to elections for the offices mentioned in the first column of the First Schedule (*nn*) to this Act as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election:

(a) The area, officer, and rate mentioned opposite to the office in the second, third, and fourth columns of the said Schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.

(b) The expression "corporate office" in the said provisions shall mean an office mentioned in the said Schedule, and in relation to the election of a guardian of a union includes any such office in the union (*o*), and "a municipal election" shall mean an election to such office, and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(c) No corrupt and illegal practices list shall be made for any such election.

(d) Vacancies created by the decision of an election court shall be filled by a new election (*p*).

(e) A petition relating to the election of a guardian of a union may be tried at any place within the union (*q*).

(f) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate

(*m*) That is, in relation to an election of urban or rural district councillors, the register of parochial electors. See the Urban District Councillors Election Order, 1898, and the Rural District Councillors Election Order, 1898, in App. II., *post*, pp. 2302, 2330.

(*n*) This Part is set out, *ante*, p. 1708.

(*nn*) And also rural district council elections; see the L. G. A., 1894, s. 48 (3), *ante*, p. 1034.

(*o*) Hence, if a guardian elected for a parish were incapacitated under s. 3 (2), by reason of the corrupt practices of his agents, he could not during three years be elected for any parish in the union.

(*p*) Hence a casual vacancy will not happen.

(*q*) Under the Rural District Councillors Election Order, 1898, rule 26 (6), in App. II., *post*, p. 2337, a petition relating to the election of a rural district councillor for a parish may be tried at any place within the poor law union in which the parish is situate.

to any office mentioned in the said Schedule on any licensed or other premises not situate in an urban sanitary district (*r*) or in the metropolis (*s*).

. . . . .

(2) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part Four of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

Exemption from provisions as to maximum expenses.

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act (*t*).

REPEAL.

38. [*Repeal of Acts.*] (*u*)

39. [*Commencement of Act, October* 1*st*, 1884.] (*u*)

EXTENT OF ACT.

Act not to extend to Scotland or Ireland.

40. This Act shall not extend to Scotland or Ireland.

41. [*Duration of Act.*] (*x*)

SCHEDULES.

FIRST SCHEDULE.

Section 36.

ELECTIONS TO WHICH THIS ACT EXTENDS (*y*).

In England.

Office.	Area.	Officer.	Rate.
Member of local board, as defined by the Public Health Act, 1875.	Local Government district or ward of such district.	Clerk to the local board, or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district or ward of such district.	Clerk to the Improvement Commissioners, or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the Poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board	School district or division of the metropolis.	Returning officer of school board.	The school fund.

* * * * *

(*r*) (*s*) (*t*) (*u*) (*x*) (*y*) For notes (*r*), (*s*), (*t*), (*u*), (*x*), (*y*), see *post*, p. 1784.

Section 2.

THIRD SCHEDULE.

PART I.

Enactments defining Corrupt Practices—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), ss. 2, 3.

Bribery defined.

S. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly (z):

(1) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any

(*r*) See the P. H. A., 1875, s. 6, *ante*, p. 37.

(*s*) As the polls at elections of district councils are no longer taken by means of voting papers, clause (g) is no longer applicable to them. Clause (h) is expressly repealed by the L. G. A., 1894.

(*t*) By s. 48 (3) of the L. G. A., 1894, *ante*, p. 1034, this section shall apply to every election regulated by rules framed under that Act as if the election were an election mentioned in the First Schedule to this Act. And by the Urban District Councillors Election Order, 1898, and the Rural District Councillors Election Order, 1898, in App. II., *post*, pp. 2302, 2330, this section must be read as if a reference to an election of urban or rural district councillors respectively was substituted for a reference to any of the elections mentioned in the First Schedule to the Act. The result is that this exemption from provisions as to maximum expenses, etc., applies to elections of rural district councillors and of urban district councillors for districts not being boroughs.

(*u*) Repealed with the Second Schedule by the S. L. R. A., 1898.

(*x*) Repealed by the S. L. R. A., 1898. See Expiring Laws Continuance Acts up to the present date.

(*y*) As to school boards, see now the Education Act, 1902, ss. 5, 25, and Sched. III. (1), (2).

(*z*) It is beyond the scope of the present Work to enter into a detailed discussion of the law relating to bribery and other corrupt practices. For information on this subject the reader is referred to works on the law of elections. One or two decisions may, however, be mentioned.

As to corrupt employment, see *Harding* v. *Stokes* (1836), 1 M. & W. 354; 2 M. & W. 233; giving money after election, *R.* v. *Thwaites* (1843), 1 El. & Bl. 704; 22 L. J. Q. B. 238.

Y. canvassed M., a voter at a municipal election, for his party, and on M. expressing an intention not to vote, told M. he would be remunerated for loss of time:—*Held*, that this was bribery (*Simpson* v. *Yeend* (1869), L. R. 4 Q. B. 626; 33 J. P. 677).

"In order to make the payment of a rate for the purpose of enabling voters to be registered affect the election, you must prove that it was done corruptly; that it was done thereby to influence their votes, which in my judgment means to induce them to vote for the person on whose behalf the payment was made": *per* MARTIN, B., in *Cheltenham Election* (1869), 1 O'M. & H. 63. In order to make a third party responsible for the payment of a rate, it must be proved that he gave authority to the person to do the act. The common law rules of agency, therefore, and not those of election law, apply to this case (*Wigan Election* (1869), 1 O'M. & H. 190; Ward's Practice at Elections, p. 158).

A single case of bribery by an agent avoids an election (*Norwich Election Petition* (1886), 54 L. T. 625).

To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery (*Packard* v. *Collings* (1886), 54 L. T. 619).

In an indictment for bribery where the date of the offence, that is of the offer of the bribe, is given in the indictment, the date of the election need not also be alleged, and even if necessary might be inserted by way of amendment (*R.* v. *Yeoman* (1905), 20 T. L. R. 266).

such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses bonâ fide incurred at or concerning any election.

S. **3**. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly: **Bribery further defined.**

(1) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.

(2) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 49.

S. **49**. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly (*a*). **Corrupt payment of rates to be punishable as bribery.**

Enactment defining the Offence of Personation.

The Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24.

S. **24**. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name (*b*). **Personation defined.**

(*a*) See the preceding note.

(*b*) H. obtained a voting paper signed by B., who was entitled to vote in an election of councillors, and gave it to F., requesting F. to go with it to the poll and vote for two candidates, and stating that F. would run no risk in doing so. F. went and handed in the paper, but on being questioned admitted that he was not B., and the vote was not received:—*Held*, that H. was properly convicted under 22 Vict. c. 35, s. 9, of inducing F. to personate a voter. *Held*, further, that it was sufficient for the conviction to state that H. induced F. to personate B., and that it need not set out the details of the process by which F. carried out the personation (*Hague* v. *Brown* (1864), 33 L. J. M. C. 81; 28 J. P. 231).

If a man applies to the presiding officer for a ballot paper in a name other than his name

Enactments defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 1, 2.

What is treating.

S. **1.** Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment or provision, shall also be guilty of treating (*c*).

What is undue influence.

S. **2.** Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 77.

Definitions.

S. **77.** "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

PART II.

Section 23.

Enactments relating to Disqualification of Electors.

The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 37, 38.

Prohibition of disqualified persons from voting. 35 & 36 Vict. c. 60. 45 & 46 Vict. c. 50.

S. **37.** Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at any election for any public office, has become incapable of voting at any election, whether a parliamentary election

of origin, or in the name by which he is generally known, but in a name which appears on the register, and which was inserted by the overseers in the belief that it was the name of the applicant, and for the purpose of putting him on the register, he is entitled to vote, and is not a person who "applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person" (*R.* v. *Fox* (1887), 16 Cox C. C. 166).

In order to sustain a conviction for personation it is not necessary to state in the indictment, or to prove at the trial, that the presiding officer at the booth where the offence was committed was duly appointed. *Semble*, the appointment of a presiding officer need not be in writing (*R.* v. *Garvey* (1887), 16 Cox C. C. 252 (C. C. R. Ir.)).

(*c*) Treating is not the entertainment of equals by equals, but of an inferior by a superior, with the object of securing the goodwill of the inferior (*Norwich Election Petition* (1886), 54 L. T. 625). Giving a school feast was held not to be treating in the *Aylesbury Election Petition* (1886), 4 O'M. & H. 59. It must be proved that the voter got his refreshment on account of his having polled or being about to poll (*per* MANISTY, J., in *Hargreaves* v. *Simpson* (1878), 4 Q. B. D. 403; 43 J. P. 767).

or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

S. **38**.—(1) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court . . . to have been guilty, at an election, of any corrupt or illegal practice, the court . . . shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported (*d*).

. . . . .

(5) Every person who, after the commencement of this Act, is reported by any election court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty . . .

(6) Where a person who is a justice of the peace is reported by any election court . . . to have been guilty of any corrupt practice in reference to any election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8) With respect to a person holding a licence or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:

(a) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licences:

(b) If it appears to an election court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court . . . (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licences:

(*d*) This section excludes the right of a person charged with any corrupt or illegal practice at a municipal election to be heard by his counsel or solicitor (*R.* v. *Mansel Jones* (1889), 23 Q. B. D. 29; 53 J. P. 739). But such a person must have an opportunity of being heard at least by himself (*R.* v. *Mansel Jones* (1894), 10 T. L. R. 515). Where after the trial of a municipal election petition the commissioner has reported persons as having been guilty of corrupt practices, the High Court has no jurisdiction to set aside or amend his report on the ground that the notice prescribed by this section was not given to the persons reported (*Preece* v. *Harding* (1890), 24 Q. B. D. 119; *Re Wigan Municipal Election Petition, Ex parte Johnson* (1894), 38 Sol. J. 386).

(c) Where an entry is made in the register of licences of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

* * * * *

Section 21.

FOURTH SCHEDULE.

FORM OF DECLARATION BY CANDIDATE AS TO EXPENSES.

I, , having been a candidate at the election of councillor for the borough [*or* ward] of , on the day of [and my agents do hereby solemnly and sincerely declare that I have paid] for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant *C. D.*

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E. F.*
Justice of the Peace for .

THE DISUSED BURIAL GROUNDS ACT, 1884.

(47 & 48 VICT. c. 72.) (*e*)

An Act for preventing the erection of Buildings on Disused Burial Grounds.
[14th August 1884.]

Short title.

1. This Act may be cited as the Disused Burial Grounds Act, 1884.

Interpretation clause.

2. In this Act a "disused burial ground" shall mean a burial ground in respect of which an Order in Council has been made for the discontinuance of burials therein in pursuance of the provisions of the said recited Acts (*f*).

(*e*) The preamble to this Act, reciting 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134, and a few words in s. 3, are repealed by the S. L. R. A., 1898.

(*f*) For the definition of a burial ground as used in this Act, see the Open Spaces Act, 1887, s. 4, *post*, p. 1804, which section is to that extent not repealed by the Open Spaces Act, 1906. That definition includes land "set apart for the purposes of interment," even though it has been so set apart in contravention of an Order in Council made under s. 1 of the Burial Act, 1853, and consequently can never be lawfully used for the purposes of interment (*Re Bosworth and Gravesend Corporation*, [1905] 2 K. B. 426; 69 J. P. 339, following *Ward* v. *Portsmouth Corporation*, [1898] 2 Ch. 191; 62 J. P. 820). See note (*q*), *post*, p. 1805, and s. 73 (4) of the Housing, Town Planning, etc., Act, 1909, *ante*, p. 1194.

3. It shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship (*g*).

No buildings to be erected upon disused burial grounds, except for enlargement, etc.

4. Nothing in this Act shall prevent the erection of any building on a disused burial ground for which a faculty has been obtained before the passing of this Act.

Savings for buildings already sanctioned.

5. Nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament (*h*).

Saving of burial ground sold by Act of Parliament.

THE CANAL BOATS ACT, 1884.

(47 & 48 VICT. c. 75.) (*i*)

An Act to amend the Canal Boats Act, 1877. [14th August 1884.]

1. A certificate of registration granted under the principal Act (*k*) shall cease to be in force in the event of any structural alterations having been made in the canal boat affecting the conditions upon which the certificate of registration has been obtained.

Certificate of registry made void by structural alterations.

2. If default is made in complying with any of the regulations made or to be made by the Local Government Board and Education Department under the principal Act (*l*) or this Act, and for the time being in force, the master of the boat with respect to which the default is made, and also the owner of the boat, if in default, shall for each default be liable on summary conviction to a fine not exceeding twenty shillings.

Penalty for contravention of regulations under Canal Boats Acts.

(*g*) A. agreed to sell to B. a chapel and adjoining ground, in which human remains were interred. Both A. and B. knew of the interments, and also that B. intended to use the ground for building. After the contract was entered into, and before completion, the above Act was passed, rendering building on " disused burial grounds " illegal. It was admitted that the land sold was a disused burial ground within the meaning of the Act :—*Held*, that B. was, nevertheless, bound to complete his contract (*Bolesworth* v. *Davis* (1886), 3 T. L. R. 214). A perpetual injunction was granted against a vestry for erecting a band stand on a disused burial ground which had been thrown open to the public as an open space (*Att.-Gen.* v. *St. Pancras Vestry* (1894), 58 J. P. 22). And see *In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702. The erection of a screen by a local authority for the purpose of preventing an adjoining land-owner, who had built on his land houses overlooking a disused churchyard, from acquiring any right of light, is not a building under this section and cannot be restrained by injunction (*Paddington Corporation* v. *Att.-Gen.*, [1906] A. C. 1; 70 J. P. 41).

So far as this section relates to churches it only permits buildings to be erected which are in physical communication with the church and enlarge it for the main and primary purpose of religious worship. It would not therefore permit the erection of a separate building to be used as a vestry hall and for Sunday schools and other parochial purposes (*London C. C.* v. *Dundas*, [1904] P. 1).

(*h*) This section applies to dispositions made after the Act (*In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702; *Att.-Gen.* v. *London Parochial Charities Trustees*, [1896] 1 Ch. 541). Under s. 24 of the Burial Act, 1857, power to let and sell the unconsecrated parts of disused burial grounds was given to the trustees thereof, the proceeds to be applied in discharge of incumbrances and the balance for the benefit of the parish as the vestry should direct. For a decision as to the present right to direct the application of the proceeds in such a case, see *Westminster Corporation* v. *St. George, Hanover Square (Rector and Churchwardens)*, [1910] A. C. 225; 74 J. P. 153. The trustees of a disused chapel and burial ground had applied to the Charity Commissioners for their sanction to the sale of the premises as a building site. It was held that such a sale by order of the Commissioners would not be a "sale or disposition under the authority of any Act of Parliament" within the meaning of this section (*In re Howard Street Congregational Chapel, Sheffield*, [1913] 2 Ch. 690).

(*i*) The preamble to this Act is repealed by the S. L. R. A., 1898.

(*k*) See the Canal Boats Act, 1877, s. 3, *ante*, p. 1664.

(*l*) *Ibid.*, s. 2, *ante*, p. 1664.

Enforcement of Act by registration and sanitary authority, and report to be made.

3. It shall be the duty of every registration or sanitary authority within whose district any canal, or any part of a canal is situate, to enforce within such district the provisions of the principal Act and this Act, and any regulations made thereunder by the Local Government Board; and every such authority shall, within twenty-one days after the thirty-first day of December in every year, make a report (*n*) to the Local Government Board as to the execution of the principal Act and this Act, and of the regulations made thereunder as aforesaid, and as to the steps taken by such authority during the year to give effect to the provisions of the said Acts and regulations.

Inquiries and reports by Local Government Board.

4. The Local Government Board shall in every year present a report to both Houses of Parliament as to the execution of the principal Act and this Act, and the observance of the regulations made by them thereunder, and shall cause inquiries to be made from time to time by an inspector or inspectors to be appointed by them for that purpose.

Such inspectors shall for the purpose of any inquiry under this Act have, in relation to witnesses and their examination, the production of papers, and inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts (*o*), and may enter any canal boat at any time by day (*p*), and examine the same and every part thereof, and may, if need be, for the purpose of such inquiry detain the boat, but for no longer time than is necessary.

The master of the boat shall, if required by any such inspector, produce to him the certificate of registry, if any, of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such inspector may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such inspector under this section shall be deemed to be an obstruction of such inspector.

If such inspector is obstructed in the performance of his duty under this Act, the person obstructing him shall be liable to a fine not exceeding forty shillings.

Power to make regulations as to school certificates, etc.

5. The power to make regulations given to the Local Government Board by the principal Act and this Act shall include power to the Education Department to make regulations with respect to the form of certificates or pass books as to attendance at school to be used by children in canal boats.

Annual report by Education Department.
33 & 34 Vict. c. 75.
36 & 37 Vict. c. 86.
39 & 40 Vict. c. 79.
43 & 44 Vict. c. 23.

6. The Education Department shall every year report to Parliament as to the manner in which the Elementary Education Acts, 1870 and 1873, 1876 and 1880, are enforced with respect to children in canal boats, and shall for that purpose direct her Majesty's Inspector of Schools to communicate with the school boards and school attendance committees in their district.

Lettering and numbering of canal boats.

7. A canal boat shall not be deemed to be lettered, marked, and numbered in conformity with section three of the principal Act (*q*), unless it is so lettered, marked, and numbered on both sides of the canal boat, or in some suitable position on the stern of the boat, so that the lettering, marking, and numbering may be plainly visible from both sides of the canal whereon the boat may be.

Application of fines.

8. Every fine recovered under the principal Act or this Act shall be paid in the case of a prosecution by any registration or sanitary authority or

(*n*) As to the information to be included in this report, see Circular of the L. G. B., dated December 16th, 1912, App. II., *post*, p. 2111.
(*o*) See note (*b*), *ante*, p. 625.
(*p*) See s. 9, *post*.
(*q*) *Ante*, p. 1664.

person authorised by any such authority to such authority or person, and if paid to such person shall be paid by him to such authority, and shall be applied towards the expenses of executing the principal Act and this Act, any Act to the contrary notwithstanding.

Definition of term "by day."

9. The expression "by day" in the principal Act and this Act shall be deemed to include the hours between six o'clock in the morning and nine o'clock at night.

Amendment of definition of canal boat.

10. If it shall at any time appear to the Local Government Board, on the representation of any registration or sanitary authority or of any inspector appointed under this Act, that the principal Act and this Act ought to apply to any vessel or class of vessels which would be within the definition of canal boat contained in section fourteen of the principal Act, if such vessel or class of vessels were not registered under the Merchant Shipping Act, 1854, and the Acts amending the same, the Local Government Board may declare that the principal Act and this Act shall apply to such vessel or class of vessels, although the same may be registered as aforesaid, and thereupon the same shall be deemed to be a canal boat or canal boats within the meaning of the principal Act and this Act, and the definition contained in section fourteen of the principal Act shall be amended accordingly (*r*).

Short title and construction of Act. 40 & 41 Vict. c. 60.

11. This Act may be cited as the Canal Boats Act, 1884, and shall be construed as one with the Canal Boats Act, 1877, which Act and this Act may be cited together as the Canal Boats Acts, 1877 and 1884.

THE LOCAL LOANS SINKING FUNDS ACT, 1885.

(48 & 49 VICT. c. 30.) (*s*)

An Act to amend the Local Loans Act, 1875, as regards the Establishment of a Sinking Fund. [22nd July 1885.]

Short title.

1. This Act may be cited for all purposes as the Local Loans Sinking Funds Act, 1885.

Limits of Act.

2. This Act shall not extend to Scotland or Ireland.

3. [*Commencement of Act, September 1st*, 1885.]

Discharge of loans by sinking funds. 38 & 39 Vict. c. 83.

4. Notwithstanding anything contained in the Local Loans Act, 1875, every loan borrowed in manner provided by that Act may be discharged by the establishment of a sinking fund as therein mentioned, notwithstanding that a sinking fund may not have been prescribed by the special Act authorising the loan.

(*r*) This section amends the definition of canal boat in the Canal Boats Act, 1877, s. 14, *ante*, p. 1668.

(*s*) This Act amends the Local Loans Act, 1875, *ante*, p. 1594. Section 13 of that Act, *ante*, p. 1599, which provides for the discharge of loans, enacts that such discharge shall be secured by one or more of certain prescribed methods. Of these methods one relates to a sinking fund, and is in these words: "*Where a sinking fund is prescribed, but not otherwise* [such discharge shall be secured], by the establishment of a sinking fund, and the application thereof in manner in this Act mentioned." The amending Act in effect repeals the words printed in italics, and enables a loan to be discharged by means of a sinking fund, although it has not been prescribed by the special Act authorising the loan. The preamble to this Act and s. 3 are repealed by the S. L. R. A., 1898.

THE QUARRY (FENCING) ACT, 1887.

(50 & 51 VICT. c. 19.)

An Act to provide for the Fencing of Quarries. [19th July 1887.]

Short title.

1. This Act may be cited as the Quarry (Fencing) Act, 1887.

2. [*Commencement of Act, January* 1*st,* 1888.]

Fencing of quarries.

3. Where any quarry dangerous to the public is in open or uninclosed land, within fifty yards of a highway or place of public resort dedicated to the public, and is not separated therefrom by a secure and sufficient fence, it shall be kept reasonably fenced for the prevention of accidents, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily in manner provided by the Public Health Act, 1875 (*t*).

Interpretation.

4. In this Act—

The term " quarry " includes every pit or opening made for the purpose of getting stone, slates, lime, chalk, clay, gravel, or sand, but not any natural opening.

Extent of Act.

5. This Act shall not extend to Scotland and Ireland.

(*t*) An unfenced quarry which is within this section is, therefore, a nuisance within the meaning of s. 91 of the P. H. A., 1875, *ante*, p. 162. Proceedings may consequently be taken against the owner under that and the succeeding sections. Notice must be given to the owner or occupier under s. 94 requiring the nuisance to be abated by the erection of a proper fence. If the notice is disregarded complaint may be made to justices under s. 96, and the local authority may themselves abate the nuisance and recover the expenses under s. 97. But members of a district council are not liable to a charge of manslaughter in case anyone is killed by falling into an unfenced quarry merely because that council have omitted to exercise their powers under the above-mentioned enactments (*R.* v. *Clerk of Assize of Oxford Circuit*, [1897] 1 Q. B. 370; 61 J. P. 197).

It should be noticed that this Act applies to quarries which are being worked as well as to those which have ceased to be worked. In this respect it differs from the somewhat similar provisions of the Coal Mines Act, 1911, *post*, p. 2139, and the Metalliferous Mines Regulation Act, 1872, *ante*, p. 1565.

As to the repair and enclosing of dangerous places, and the fencing of lands adjoining streets, see ss. 30 and 31 of the P. H. A., 1907, *ante* pp. 1114, 1115.

The plaintiff was in the occupation of the surface of a field, and the defendants were in the occupation of a quarry in the same field, which they had enlarged. Both held under the same landlord. The quarry was entirely unfenced. One of the plaintiff's bullocks fell into the quarry and was killed :—*Held*, that the plaintiff was entitled to recover damages from the defendants for the loss of the bullock (*Hawken* v. *Shearer and Another*, W. N. (1887) 89; 56 L. J. Q. B. 284).

A proprietor is under no obligation to fence a disused quarry on his property which is at a distance of upwards of 150 yards from the nearest point of the public road. A person on a dark night left the public road, and was found in the morning in a dying state at the bottom of the face of a disused quarry, eighteen feet in height. The quarry was more than 150 yards from the nearest point of the public road. A path, which had served as an access to the quarry when it was in use eight years before, left the public road about 200 yards from the quarry, and continued towards the quarry, which was overgrown with long grass and willows. The path was occasionally used by inhabitants of the district, but, against the remonstrances of the proprietor and his tenant, passed within six yards of the edge of the quarry face. The person who had fallen in was a stranger in the district, and was unable to give any account of how he had reached the spot where he fell. In an action for damages against the proprietor by the representatives of the deceased, a jury found for pursuers. A new trial was granted on the ground that the evidence disclosed no fault on the part of the defender (*Prentice* v. *Assets Co., Ltd.* (1890), 17 Ct. of Sess. Cas. (4th ser.) 484).

THE WATER COMPANIES (REGULATION OF POWERS) ACT, 1887.

(50 & 51 VICT. c. 21.)

An Act to limit the Powers of the Water Companies to cut off the Tenant's Water Supply where the Rate is paid by the Landlord. [8th August 1887.]

1. This Act may be cited as "The Water Companies (Regulation of Powers) Act, 1887." Short title.

2. This Act shall not extend to Scotland or Ireland. Extent of Act.

3. This Act shall apply to every water company which is a trading company supplying water for profit, and to which any of the provisions of the Waterworks Clauses Act, 1847, have been or shall be made applicable by any special Act or Provisional Order confirmed by Parliament, and every such special Act or Provisional Order shall be deemed to be amended by this Act, and shall be construed accordingly (*u*). Application of Act.

4. Where the owner and not the occupier is liable by law (*x*) or by agreement with the water company to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement no water company shall cut off the water supply for non-payment of the water rate (*y*), but such water rate, without prejudice to the other remedies of the company for enforcing payment thereof from such owner (*z*), shall, together with interest thereon at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the company until receipt thereof by the company, be a charge on such dwelling-house in priority to all other charges affecting the premises (*a*); and (without prejudice to such charge) the amount may be Water not to be cut off where the water rate is payable by the owner.

(*u*) From this section it appears that it does not apply to a local authority supplying water by virtue of the powers contained in the P. H. A., 1875, as such an authority is not a trading company supplying water for profit. The Provisional Order here referred to is an Order obtained under the Gas and Water Works Facilities Act, 1870, *ante*, p. 1497, and the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, *ante*, p. 1574.

(*x*) The owner of a house not exceeding £10 rent is liable to pay water rates by virtue of the Waterworks Clauses Act, 1847, s. 72, *ante*, p. 1425. The words "is liable" refer to a liability at the date when the water rate became due, and if there was at that date an occupier other than the owner, and the owner and not the occupier was liable for the payment of that rate, the section prohibits the water company from cutting off the supply for non-payment of the rate, even after the occupier has given up possession and the premises have become vacant (*Metropolitan Water Board* v. *Bibbey*, [1911] 2 K. B. 74; 75 J. P. 322).

(*y*) The power to cut off the supply of water for non-payment of water rate is given by 10 & 11 Vict. c. 17, s. 74, *ante*, p. 1426.

(*z*) These remedies are given by the Waterworks Clauses Act, 1847, s. 74, *ante*, p. 1426, and the Waterworks Clauses Act, 1863, s. 16, *ante*, p. 1491. The owner of a block of flats which were respectively of an annual value not exceeding £20 entered into an agreement with a water company for the supply of water to the flats by meter. The owner subsequently mortgaged the premises, and upon his getting into financial difficulties, the mortgagees appointed the defendant to act as receiver of the rents on their behalf. At the date of the defendant's appointment there were arrears owing to the plaintiffs (successors to the company) for water supplied to the flats under the agreement. CHANNELL, J., held that the defendant was not the owner of the premises within the meaning of this section and was not liable as such for the arrears existing at the time of his appointment (*Metropolitan Water Board* v. *Brooks*, [1910] 2 K. B. 134; 74 J. P. 233). The Court of Appeal reversed the decision of CHANNELL, J., but not on this ground ([1911] 1 K. B. 289; 75 J. P. 41).

(*a*) See the notes to the corresponding provisions of s. 257 of the P. H. A., 1875, *ante*, p. 566. The words "in priority to all other charges" appear to be superfluous, as the charge under the Act would affect the property in the hands of a mortgagee. See *Birmingham Corporation* v. *Baker* (1881), 17 Ch. D. 782; 46 J. P. 52.

recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered (*b*): Provided always, that proceedings shall not be taken against the occupier until notice shall have been given to him or left at his dwelling-house to pay the amount due for water rate out of the rent then due or that may thereafter become due from him, and he shall have omitted so to pay such water rate; and provided also, that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him or which he shall have paid on demand (*c*).

Penalty on cutting off of supply in contravention of the Act.

5. In the event of any such supply being cut off in contravention of this Act, the company cutting off the same shall be liable to a penalty not exceeding five pounds for each day during which the water shall remain cut off, which penalty shall be recoverable summarily from the company by, and shall be paid to, the person aggrieved (*d*).

THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

(50 & 51 VICT. c. 26.)

An Act to provide Compensation to the Occupiers of Allotments and Cottage Gardens for crops left in the ground at the end of their tenancies.

[8th August 1887.]

Short title.

1. This Act may be cited as the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (*e*).

Extent of Act.

2. This Act shall not extend to Scotland or Ireland or to the metropolis.

3. [*Commencement of Act, January 1st,* 1888.]

Definitions.

4. In this Act—

18 & 19 Vict. c. 120.

"The metropolis" means the city of London and all parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855.

(*b*) See note (*z*), *ante*, p. 1793.

(*c*) A landlord gave a tenant notice to quit, and on the tenant continuing to remain in possession gave notice to a water company to cut off the supply, which they did:—*Held*, that, as the cutting off had not been for non-payment of the water rate, the above Act did not apply (*Chelsea Waterworks Co.* v. *Paulet* (1887), 4 T. L. R. 239).

The effect of the above section is, that a purchaser of the freehold of a dwelling-house is liable to a personal action at the suit of the waterworks company to recover arrears of water rate which accrued due before the date of the purchase (*East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 72; 56 J. P. 773).

(*d*) Although *primâ facie* the tenant would be the person aggrieved, the landlord may also be "aggrieved" (*Metropolitan Water Board* v. *Bibbey*, *ante*, p. 1793). And see *South West Suburban Water Co.* v. *Hardy* (1913), 77 J. P. 283; 109 L. T. 169.

(*e*) This Act applies to sanitary authorities only in so far as they may provide allotments under the Small Holdings and Allotments Act, 1908, *post*, p. 2085 (see s. 47 thereof). In such case they are landlords as defined by s. 4 of this Act. The Act is amended in so far as it relates to the compensation payable to tenants for improvements when the land is under mortgage and the mortgagee takes possession, by the Tenants' Compensation Act, 1890, *post*, p. 1853.

"Allotment" means any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden or as a farm, or partly as a garden and partly as a farm (*f*).

"Cottage garden" means an allotment attached to a cottage.

"Holding" means an allotment or cottage garden.

"Tenant" means the holder of a holding under a landlord for any term and includes the legal personal representative of a deceased tenant.

"Landlord" means the person for the time being entitled to receive the rents and profits of any holding (*g*).

"Person" includes a body of persons and a corporation aggregate or sole.

"Contract of tenancy" means the letting of land for any term (*h*).

"Determination of tenancy" means the cesser of a contract of tenancy by effluxion of time or from any other cause (*i*).

The designations of landlord and tenant shall for the purposes of this Act continue to apply to the parties to a contract of tenancy until the conclusion of any proceedings taken under this Act on the determination of a tenancy (*k*).

5. Upon the determination of the tenancy of a holding after the commencement of this Act the tenant shall be entitled notwithstanding any agreement to the contrary to obtain from the landlord compensation in money for the following matters and things, that is to say : Compensation.

(a) For crops, including fruit, growing upon the holding in the ordinary course of cultivation, and for fruit trees and fruit bushes growing thereon, which have been planted by the tenant with the previous consent in writing of the landlord (*l*).

(b) For labour expended upon and for manure applied to the holding since the taking of the last crop therefrom in anticipation of a future crop.

(*f*) A piece of land less than two acres in extent, occupied by a seedsman and nursery gardener for the purposes of his business, and having in it vegetables, fruit trees, and flowering plants which he sold, was held not to be cultivated as a garden, and, therefore, not an allotment within the meaning of this Act (*Cooper* v. *Pearse*, [1896] 1 Q. B. 562; 60 J. P. 282). By s. 47 (2) of the Small Holdings and Allotments Act, 1908, *post*, p. 2098, the tenant of an allotment to which the Allotments Acts as amended by this Act apply may, if he so elects, claim compensation for improvements under the Allotments and Cottage Gardens (Compensation for Crops) Act, 1887, instead of under the Agricultural Holdings (England) Acts, 1883 to 1906, as amended by this section, notwithstanding that the allotment exceeds two acres in extent.

(*g*) This definition, as explained by the next one, will include a sanitary authority who have provided allotments under the Small Holdings and Allotments Act, 1908, *post*, p. 2085.

(*h*) See *King* v. *Eversfield*, [1897] 2 Q. B. 475; 61 J. P. 740.

(*i*) See *Morley* v. *Carter*, [1898] 1 Q. B. 8, where it was held under the Agricultural Holdings (England) Act, 1883, that the determination of the tenancy meant the determination of the holding so far as it is agricultural. See also *Black* v. *Clay*, [1894] A. C. 368; *Ex parte Earl of Portarlington, In re Paul* (1890), 24 Q. B. D. 247; 54 J. P. 644, decided under the same Act.

(*k*) As to the effect of this clause, see *Gough* v. *Gough*, [1891] 2 Q. B. 665; 55 J. P. 807.

(*l*) The Small Holdings and Allotments Act, 1908, s. 47 (4), provides that the tenant of an allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation. It will be observed that the text gives a right of compensation only in respect of fruit trees and fruit bushes planted with the consent in writing of the landlord. All other trees and bushes and all fruit trees and fruit bushes planted without this consent must be removed by the tenant if he desires to have the benefit of them. See further s. 18 of this Act and note thereto, *post*, p. 1797.

(c) For drains and for any outbuildings, pigsties, fowlhouses, or other structural improvements made by the tenant upon his holding with the written consent of his landlord (*m*).

Deduction from compensation on account of rent or breach of contract.

6. In the ascertainment of the amount of compensation payable to the tenant under this Act, any sum due to the landlord in respect of rent or of any breach of the contract of tenancy or wilful or negligent damage committed or permitted by the tenant shall be taken into account in reduction of the amount of compensation (*n*).

Compensation if not agreed upon to be settled by an arbitrator.

7. The landlord and tenant may agree upon the amount and time of payment of compensation to be paid under this Act. If in any case they do not so agree, the difference shall be settled by an arbitrator (*o*).

Appointment of arbitrator.

8. If the landlord and tenant concur they may within twenty-eight days (*p*) after the determination of the tenancy jointly appoint such arbitrator. If they do not concur, such arbitrator shall be appointed in the following manner:

(1) The landlord and tenant or either of them may apply personally or in writing to the justices of the peace, acting for the petty sessional division in which the holding is situated, in petty sessions, and such justices shall upon the receipt of the application appoint one of their number not being interested in the holding (*q*), or other competent person not being interested as aforesaid, to act as such arbitrator.

(2) If before award the person so appointed dies or becomes incapable of acting or for seven days after his appointment fails to act the justices shall appoint in manner aforesaid another arbitrator.

Justices if practicable to appoint person to act as arbitrator without remuneration.

9. The justices shall in all cases in which it is practicable obtain the consent of the arbitrator to act without remuneration, and in any case in which it is impracticable to obtain such consent they shall direct that the arbitrator shall be paid such moderate sum as they consider will reasonably remunerate him for his time and expenses.

Time for commencement of arbitration.

10. The arbitrator shall proceed to determine any difference referred to him under this Act within seven days after his appointment.

Power for arbitrator to administer oaths.

11. The arbitrator, if he shall consider it desirable or necessary so to do, shall have power to call for the production of any document which is in the possession of either party, or which either party can produce, and which to the arbitrator seems necessary for determination of the difference referred to him, and to take the examination of the parties and witnesses on oath and to administer oaths and take affirmations, and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

Power to proceed in absence of either party.

12. The arbitrator may proceed in the absence of either party after notice given to both parties.

(*m*) As to an allotment holder's right to remove buildings for which he has no claim for compensation, see s. 47 (4) of the Small Holdings and Allotments Act, 1908, *post*, p. 2098.

(*n*) This may enable a sanitary authority to counterclaim in respect of any breach of the regulations made under s. 28 of the Small Holdings and Allotments Act, 1908, *post*, p. 2090. If a greater amount is due from the tenant to the sanitary authority for rent or breach of regulations than from the authority to the tenant for compensation, the arbitrator cannot award the balance to the sanitary authority, but they must take the ordinary proceedings for recovery of the balance (*In re Holmes and Formby*, [1895] 1 Q. B. 174).

(*o*) Compensation cannot be recovered otherwise than through arbitration. See *Gaslight and Coke Co.* v. *Holloway* (1885), 49 J. P. 344; 52 L. T. 434; *Schofield* v. *Hincks* (1889), 58 L. J. Q. B. 147; 60 L. T. 573.

(*p*) The twenty-eight day limit does not apply where the landlord and tenant do not concur (*Harding* v. *Smith* (1897), 32 L. J. Jo. 49).

(*q*) The chairman of the district council being also a justice of the peace *virtute officii*, under s. 22 of the L. G. A., 1894, *ante*, p. 997, would be interested in the holding.

13. The award shall be in writing signed by the arbitrator, and shall be ready for delivery within fourteen days after his appointment, or within such extended time not exceeding in the whole twenty-eight days after his appointment as the parties may agree upon in writing (*r*). Form of award and time for its delivery.

14. The costs (if any) of and attending the arbitration including the remuneration (if any) of the arbitrator shall be borne and paid by the parties in such proportion as to the arbitrator appears just, and the award may direct the payment of the whole or any part of the aforesaid costs by the one party to the other, or may declare that no costs shall be payable (*s*). Costs of arbitration.

15. The award shall fix a day not sooner than fourteen days after the delivery of the award for the payment of the money awarded for compensation, costs, or otherwise (*t*). Day for payment.

16. The award shall be final and conclusive in every case; and neither the submission to arbitration nor the award shall be made a rule of any court, or be removable by any process into any court. Award to be final.

17. Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it shall be recoverable upon order made by the judge of the county court within the district of which the holding is situated, as money ordered to be paid by a county court under its ordinary jurisdiction is recoverable (*u*). Recovery of compensation money.

18. No claim for compensation shall be made under the Agricultural Holdings (England) Act, 1883 (*x*), for any matter or thing in respect of which a claim for compensation is made under this Act, and in any case in which the provisions of that Act and of this Act conflict the provisions of this Act shall prevail (*y*). No claim to be made under the Agricultural Holdings (England) Act for any matter or thing for which a claim is made under this Act.

THE MARKETS AND FAIRS (WEIGHING OF CATTLE) ACT, 1887.

(50 & 51 VICT. c. 27.) (*z*)

An Act to amend the Law with respect to weighing Cattle in Markets and Fairs.
[8th August 1887.]

Whereas it is expedient to afford the like facilities for weighing cattle in markets and fairs as are afforded for weighing goods and carts under the Markets and Fairs Clauses Act, 1847, *in markets and fairs to which that Act applies* (*a*): 10 & 11 Vict. c. 14.

1. This Act may be cited as "The Markets and Fairs (Weighing of Cattle) Act, 1887." Short title.

(*r*) The arbitrator cannot himself extend the time. That must be done by the written agreement of the parties. It is to be observed that under s. 10 the arbitrator must proceed to determine the matters in dispute within seven days, though he may deliver his award within fourteen days, or within the extended time, if any.

(*s*) The arbitrator must himself determine the costs.

(*t*) By s. 30 (2) of the Small Holdings and Allotments Act, 1908, *post*, p. 2090, the compensation is to be paid on demand, but this may refer only to compensation which is not in dispute. By the same section, sub-s. (3), if proceedings are taken for the recovery of an allotment the court may stay delivery of possession until the compensation has been paid.

(*u*) For procedure, see County Court Rules, Order XL., r. 8, which provides that it shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in any such action, and shall state concisely the nature of the claim or dispute, and the relief or order which the plaintiff claims.

(*x*) Replaced by the Agricultural Holdings Act, 1908.

(*y*) (*z*) (*a*) For notes (*y*), (*z*), (*a*) see p. 1798.

Application of Act.

2. This Act, save as is hereinafter provided, shall apply to all markets and fairs in which tolls are for the time being authorised to be taken and actually are taken in respect of cattle by any company, corporation, or person and every such company, corporation, or person is in this Act called "the market authority" (*b*).

Interpretation.

3. In this Act the word "cattle" includes (*c*) ram, ewe, wether, lamb, and swine.

Accommodation for weighing cattle to be provided.

4. In or near (*d*) to every market or fair to which this Act applies, the market authority shall provide and maintain sufficient and proper buildings or places for weighing cattle brought for sale within the market or fair, and shall keep therein or near thereto weighing machines and weights for the purpose of weighing cattle, and shall appoint proper persons to have charge of such machines and weights, and to afford the use of such machines and weights to the public for weighing cattle as may be from time to time required.

The market authority shall have the accuracy of such weighing machines and weights tested at least twice every year by the local inspector of weights and measures of and for the county, borough, or place where the market is situate, and the cost of such testing shall be borne by such market authority.

If the market authority fail to comply with the provisions of this section, it shall not be lawful for them to demand, receive, or recover any toll whatever in respect of any cattle brought to the market or fair for sale so long as such failure continues, but this enactment shall not apply till after the first day of January one thousand eight hundred and eighty eight (*e*).

(*y*) The Small Holdings and Allotments Act, 1908, ss. 30, 47, *post*, pp. 2090, 2097, provide that the tenant may elect to have his compensation determined under this Act or under the Agricultural Holdings Act, 1908.

(*z*) This Act is amended in some important respects by the Markets and Fairs (Weighing of Cattle) Act, 1891, *post*, p. 1863. In particular its application is extended to auction marts.

(*a*) The provisions of the Markets and Fairs Clauses Act, 1847, here referred to, are the 10 & 11 Vict. c. 14, ss. 21—30. These provisions are incorporated with the P. H. A., 1875, by s. 167 of that Act, *ante*, p. 383, and are set out, *ante*, p. 1383.

(*b*) This Act will, therefore, apply to local authorities which possess or have the control of markets, whether by virtue of the P. H. A. or otherwise, if their tolls include tolls for cattle, and such tolls are actually taken.

(*c*) See the observations on the word "includes," *ante*, p. 6, note (*b*). Its effect is to extend the meaning of the term with reference to which it is used, so that the word "cattle" in this Act will include not only the animals ordinarily described as "cattle," but also the animals enumerated in the section.

(*d*) Observe that the necessary accommodation need not be actually in the market. It may be *near* it, *i.e.*, in some convenient place outside, but not far from the market.

(*e*) It will be necessary for every market authority to which this Act applies (see note (*b*), *supra*), to provide the weighing accommodation required by the Act, otherwise tolls for cattle cannot be demanded or taken until the Act is complied with.

The Markets and Fairs (Weighing of Cattle) Act, 1891, s. 2, *post*, p. 1863, provides that the market authority of every market or fair shall, unless exempted by Order of the Board of Agriculture, provide and maintain to the satisfaction of the Board sufficient and suitable accommodation for weighing cattle, and that default of so doing shall be deemed default in complying with the above section.

In December, 1887, the plaintiffs, as the market authority under the above section, took steps to provide a weighing machine for cattle upon a site in their market-place, which, according to the plaintiff's contention, consisted of two long and narrow strips in the market town separated by the highway. The defendants interfered, their contention being that the market-place was not distinct from the highway; and that the entire space upon which the markets were held was a public highway dedicated to the use of the public, subject only to the right of the owner of the soil for the time being, or her lessees, to hold markets thereon, and that the market-place, as a highway, was vested in them, the defendants, as an urban authority, under the P. H. A., 1875, and that the proposed weighing machine would be a public nuisance, and interfere with their rights in such highway, and with the public right of passage thereon :—*Held*, that the above section was an imperative section, and the

Any person who demands or receives any toll in respect of cattle in any market or fair to which for the time being this Act applies (*f*), but in which the market authority have not complied with the provisions of this Act, shall be liable on summary conviction (*g*) to a fine not exceeding five pounds.

5. Every person selling, offering for sale, or buying any cattle in a market or fair provided with accommodation for weighing cattle may require such cattle to be weighed, and the tolls payable in respect of the weighing shall be paid by the person requiring the cattle to be weighed to the person authorised by the market authority, to receive the tolls. Cattle to be weighed at option of seller or buyer.

6. Every person appointed by the market authority to weigh cattle sold in the market or fair, who— Penalty for refusal to weigh cattle or to give ticket, etc.

(a) refuses or neglects to weigh the same when required; or

(b) refuses or neglects to deliver to the seller or buyer a ticket specifying the true weight of the cattle weighed; or

(c) gives to any person a false ticket or account of any cattled weighed (*h*);

shall be liable on summary conviction (*g*) to a fine not exceeding forty shillings and not less than half a crown.

7. Every person who knowingly acts or assists in committing any fraud respecting the weighing of any cattle weighed in pursuance of this Act, shall for every such offence be liable on summary conviction (*g*) to a fine not exceeding five pounds. Penalty for fraud.

8. The market authority may from time to time (unless otherwise expressly provided by any Act) demand and receive in respect of the weighing of cattle tolls not exceeding the amounts specified in the Schedule to this Act, or such other amounts as may be authorised by the Local Government Board to be taken by the market authority; and sections thirty-six to forty-one (both included) of the Markets and Fairs Clauses Act, 1847 (*k*), shall apply to the tolls mentioned in this section, as if this Act were the special Act, and the market authority were the undertakers. Tolls for weighing cattle. 10 & 11 Vict. c. 14.

market authority was not only at liberty, but was bound, to provide a proper weighing machine for their market, which, according to the Act, must be a permanent structure, and not a movable machine:—*Held*, also, that the defendants were entirely wron; in their contention, and that they must, therefore, be restrained from interfering with the plaintiff (*McIntosh* v. *Romford L. B.* (1889), 61 L. T. 185; 5 T. L. R. 643).

A portion of a cattle market was let by the market authority to auctioneers for exclusive use by them as a sale yard, such portion consisting of a covered shed separated from the rest of the market. All animals sold in this yard had to pass through the market gates and to pay toll to the market authority. There were no facilities for weighing cattle in the yard, but a weigh-bridge was provided in the market at which cattle sold in the sale yard could be weighed. It was held that there being within the market facilities for weighing cattle, there were facilities for weighing cattle in or near to the auctioneer's mart to satisfy the requirements of s. 4 (*Knott* v. *Stride* (1913), 77 J. P. 222; 109 L. T. 181).

(*f*) See note (*b*), *ante*, p. 1798.

(*g*) The effect of this provision is that the fine must be recovered pursuant to the S. J. Acts. See the S. J. A., 1879, s. 51 (1), which regulates the application of the S. J. Acts to future Acts. There are no restrictions on the recovery of this fine, and it may be recovered at the instance of a common informer. The informer will not, however, receive any part of the fine, which is payable to the treasurer of the county or borough, as the case may be, as an unappropriated penalty under the S. J. A., 1848, s. 31.

(*h*) No doubt the same person will be appointed to fulfil the duties imposed by this Act as is appointed to perform the similar duties imposed by the Markets and Fairs Clauses Act, 1847, s. 21, *ante*, p. 1389. The duty of such person will be to weigh any cattle brought to the market for sale at the request of either the buyer or the seller, and after weighing to deliver a ticket specifying the true weight of the cattle weighed.

(*k*) See these sections, *ante*, p. 1391. They relate, *inter alia*, to the recovery of the tolls, and require a list of the tolls to be set up in conspicuous places.

Power to exempt certain markets and fairs from provisions of Act.

9.—(1) The market authority of any market or fair may at any time apply to the Local Government Board to be exempted from the provisions of this Act on the ground that the sale of cattle at such market or fair is or is likely to be so small as to render it inexpedient to enforce the provisions and maintenance of a place for weighing cattle and of a weighing machine under this Act; and thereupon the Local Government Board may by Order declare that this Act shall not apply to such market or fair until after the expiration of a time not exceeding three years to be limited by such Order. Any Order made under this section may at any time be wholly or partially rescinded, altered, or extended by any subsequent Order of the Local Government Board (*l*).

(2) This Act shall not apply to any market or fair to which any Order under this section applies so long as it is declared by such Order that this Act shall not apply thereto (*m*).

10. [*Application of Act to Scotland and Ireland.*]

THE SCHEDULE.

	Not exceeding
For every head of cattle other than sheep or swine . .	Twopence.
For sheep or swine, every five or less number . . .	One penny.

THE MARGARINE ACT, 1887.

(50 & 51 VICT. c. 29.)

An Act for the better Prevention of the Fraudulent Sale of Margarine (*n*).
[23rd August 1887.]

Whereas it is expedient that further provision should be made for protecting the public against the sale as butter of substances made in imitation of butter, as well as of butter mixed with any such substances:

Short title.

1. This Act may be cited as "The Margarine Act, 1887."

2. [*Commencement of Act, January* 1, 1888.]

Definition.

3. The word "butter" shall mean the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter.

The word "margarine" shall mean all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not,

(*l*) The powers of the L. G. B. are now transferred to the Board of Agriculture and Fisheries (54 & 55 Vict. c. 70, s. 1, *post*, p. 1863; and see ss. 2, 4 of that Act as to exemptions by the Board). Any applications for orders of exemptions should be accompanied by full particulars as to the nature and extent of the sales of cattle in the market, fair, or mart during the previous three years, and as to the amounts of toll levied (Circular Letter of the Board of Agriculture, dated November 25th, 1891).

(*m*) This section contains the only exception to the application of the Act to local authorities who have markets in which tolls are charged for the sale of cattle.

(*n*) This Act imposes important powers and duties on medical officers and inspectors of nuisances, and is really supplemental to the Sale of Food and Drugs Acts, 1875, *ante*, p. 1577, and 1879, *ante*, p. 1691. See also the Sale of Food and Drugs Act, 1899, and the Butter and Margarine Act, 1907, *post*, pp. 1965, 2072.

and no such substance shall be lawfully sold, except under the name of margarine, and under the conditions set forth in this Act (*o*).

Penalty.

4. Every person dealing in margarine, whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise, who is found guilty of an offence under this Act, shall be liable on summary conviction for the first offence to a fine not exceeding twenty pounds, and for the second offence to a fine not exceeding fifty pounds, and for the third or any subsequent offence to a fine not exceeding one hundred pounds (*p*).

Exemption from penalty.

5. Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty (*q*).

Marking of cases.

6. Every person dealing in margarine in the manner described in the preceding section shall conform to the following regulations:

Every package, whether open or closed, and containing margarine, shall be branded or durably marked "Margarine" on the top, bottom, and sides, in printed capital letters, not less than three-quarters of an inch square (*r*);

(*o*) This Act as amended by the Sale of Food and Drugs Act, 1899, *post*, p. 1965, was extended by s. 5 of that Act to margarine-cheese.

It was held that the definition of margarine contained in this section did not authorise the adulteration of margarine with water so as to preclude any conviction under s. 6 of the Sale of Food and Drugs Act, 1875, for selling to the prejudice of the purchaser margarine not of the nature, substance, and quality demanded (*Burton* v. *Mattinson* (1902), 66 J. P. 628; 86 L. T. 770). It was held also that butter blended with milk so that it contains an excess of water did not become margarine within the meaning of this definition. Therefore a vendor of such milk-blended butter could not be convicted under s. 8 of the Sale of Food and Drugs Act, 1899, for selling margarine containing more than 10 per cent. of butter fat, because the sale of butter blended with milk was lawful if sold as such (*Bayley* v. *Pearks, Gunston and Tee, Limited* (1902), 66 J. P. 790; 87 L. T. (N.S.) 67).

The definition of "margarine" as contained in this section has, however, now been superseded by that contained in s. 13 of the Butter and Margarine Act, 1907, *post*, p. 2076, which now provides that "(1) for the purposes of the Sale of Food and Drugs Acts and this Act the expression 'margarine' shall mean any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter. (2) The above definition shall be substituted for the definition of margarine in the Margarine Act, 1887." This definition includes any substance prepared in imitation of butter although it contains no animal fat and was unknown when the Margarine Act, 1887, was passed (*Wilkinson* v. *Alton* (1908), 72 J. P. 252; 99 L. T. 119).

As to the sale of milk-blended butter, see s. 9 of the same Act, *post*, p. 2075.

(*p*) This section applies to dealing in margarine-cheese. See preceding note.

As to proceedings, see s. 12, *post*, p. 1804. And as to punishment by imprisonment, see the Sale of Food and Drugs Act, 1899, s. 17 (2), *post*, p. 1972.

(*q*) This section is intended to protect a master who had, as in *Brown* v. *Foot*, *ante*, p. 1578, given direct instructions which are disobeyed.

Compare the Bread Act, 1836, s. 13; the Locomotives Act, 1898, s. 13, *post*, p. 1913, and the Factory and Workshop Act, 1901, s. 141, *post*, p. 2010. It is doubtful whether the other person, if convicted, can, in the absence of express enactment, as in the Factory and Workshop Act, 1901, s. 141, be ordered to pay costs.

By s. 11 (2) of the Butter and Margarine Act, 1907, *post*, p. 2076, this section is applied to proceedings under that Act with the substitution of references to that Act for references to the Margarine Act, 1887.

(*r*) The Sale of Food and Drugs Act, 1899, s. 6, *post*, p. 1969, amends this section by providing that no other printed matter than the word "Margarine" shall appear "on" he paper wrapper, and it has been held that s. 6 of the Act of 1899 is not repealed by

and if such margarine be exposed for sale (*s*), by retail, there shall be attached to each parcel (*t*) thereof, so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than one-and-a-half inches square, "Margarine"; and every person selling margarine by retail, save in a package duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in a paper wrapper, on which shall be printed in capital letters "Margarine" (*u*).

Presumption against vendor.

7. Every person dealing with, selling, or exposing or offering for sale, or having in his possession for the purpose of sale, any quantity of margarine (*v*)

s. 8 of the Margarine and Butter Act, 1907, *post*, p. 2075, which permits margarine to be described "in" a wrapper by a name combining the word "Margarine" with a fancy or descriptive word approved by the Board of Agriculture and Fisheries (*Williams* v. *Baker*, [1911] 1 K. B. 566; 75 J. P. 89). The package, label or wrapper must not describe the contents by any name other than margarine or by a name combining the word "Margarine" with an approved fancy name. This enactment meets the cases of *Tanner* v. *Dyball* (1906), 70 J. P. 279; 94 L. T. 539; and *Keeloma Dairy Co.* v. *Jones* (1906), 70 J. P. 533; 22 T. L. R. 535. Thus, in *Williams* v. *Baker*, *supra*, it was held to be an offence, on a sale of a kind of margarine called by the approved name of "Karmo," to deliver it to the purchaser in a paper wrapper on which were the printed words "Karmo Margarine." In another case a retail dealer sold by retail a parcel of margarine in a cardboard case bearing on its outside an impression of a cabbage leaf, and the words "Green Leaf Margarine." The cardboard case was wrapped in thin transparent paper upon which was printed "Margarine." The words "Green Leaf Margarine" appeared through this wrapper. The wrapper was fastened at each end by a circular gummed label on which was printed "4*d.* per packet about ½ lb." It was held that the words "Green Leaf" appearing through the transparent wrapper might, and the words printed on the gummed label did constitute a breach of this section as amended by s. 6 of the Act of 1899 (*Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139). A dealer in margarine had in his shop at the back of his counter and in full view of customers several tubs open at the top containing margarine:—*Held*, that these tubs were packages within the meaning of this section, and that they should have been branded or durably marked as required by this section (*McNair* v. *Horan* (1904), 68 J. P. 518; 91 L. T. 555).

(*s*) The respondent kept margarine for sale in his shop, in a parcel which was not labelled, behind a screen and not in sight of customers. There was no evidence that this was done for the purpose of evading the Act:—*Held*, that the margarine was not exposed for sale within the meaning of the above section (*Crane* v. *Lawrance* (1890), 25 Q. B. D. 152; 54 J. P. 471). The meaning of the words "exposed for sale" is not limited to such an exposure as will enable purchasers to see the margarine itself. Margarine when wrapped in paper so as to be invisible to the purchaser may be exposed for sale within the meaning of the above section (*Wheat* v. *Brown*, [1891] 1 Q. B. 418; 56 J. P. 153).

(*t*) On the defendant's counter was a butt of margarine from which the lid had been removed, but which was branded on the lid bottom and side with the word margarine. There was no label attached as required by the Act. Defendant's assistant on being asked for one pound of margarine by the prosecutor sliced away that quantity from the margarine in the butt and sold it to him:—*Held*, that the butt was a parcel and should have been duly labelled (*Maguire* v. *Pater*, [1905] 2 I. R. 147). Six separate pounds of margarine, each partially covered with paper, placed together in a shop window in the form of a pyramid, and touching each other, form one parcel within the meaning of this provision, and are sufficiently labelled by a single label placed at the base of the pyramid so as to extend across the whole bottom portion of the three lowest pieces (*Parkinson* v. *McNair* (1905), 69 J. P. 399; 93 L. T. 553).

(*u*) This section does not apply to the sale of margarine spread on bread, and sold in a refreshment-house as bread and butter (*Moore* v. *Pearce's Dining and Refreshment Rooms, Ltd.*, [1895] 2 Q. B. 657; 59 J. P. 805). As to the sale of marked boxes in brown paper not marked, see *Toler* v. *Bischop* (1896), 60 J. P. 9; 65 L. J. M. C. 4).

The section applies to the sale of margarine-cheese (see the Sale of Food and Drugs Act, 1899, s. 5, *post*, p. 1969), and of milk-blended butter. See the Butter and Margarine Act, 1907, s. 9, *post*, p. 2075.

(*v*) This section applies to margarine-cheese, and for that purpose must be read with the substitution of "margarine-cheese" and "cheese" for "margarine" and "butter," and provided that all margarine cheese sold or dealt in otherwise than by retail shall either be enclosed in packages marked in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words "margarine-cheese." See the Sale of Food and Drugs Act, 1899, s. 5, *post*, p. 1969.

contrary to the provisions of this Act (*x*), shall be liable to conviction for an offence against this Act (*y*), unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter (*z*), and with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter, and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence (*a*).

8. All margarine imported (*b*) into the United Kingdom of Great Britain and Ireland, and all margarine whether imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine; and it shall be lawful for any officer of her majesty's Customs or Inland Revenue, or any medical officer of health, inspector of nuisances (*c*), or police constable, authorised under section thirteen of the Sale of Food and Drugs Act, 1875 (*d*), to procure samples for analysis if he shall have reason to believe that the provisions of this Act are infringed on this behalf, to examine and take samples from any package, and ascertain, if necessary by submitting the same to be analysed, whether an offence against this Act has been committed (*e*). Margarine imported or manufactured. 38 & 39 Vict. c. 63.

9. Every manufactory of margarine within the United Kingdom of Great Britain and Ireland shall be registered by the owner or occupier thereof with the local authority (*f*) from time to time in such manner as the Local Government Boards of England and Ireland and the Secretary for Scotland respectively may direct, and every such owner or occupier carrying on such manufacture in a manufactory not duly registered shall be guilty of an offence under this Act (*g*). Registration of manufactory.

10. Any officer authorised to take samples under the Sale of Food and Power to inspector to

(*x*) The provisions here referred to are those in the preceding section.
(*y*) The punishment for such offence is prescribed by s. 4, *ante*, p. 1801.
(*z*) See note (*v*), ante, p. 1802.
(*a*) This provision is similar to that contained in the Sale of Food and Drugs Act, 1875, s. 25, *ante*, p. 1589. The effect of the whole section is to throw on the defendant the burden of disproving intent and knowledge, not to make him liable irrespective of his state of mind (*Fitzgerald* v. *Leonard* (1891), 32 L. R. Ir. 675). As to its application to servants of the party purchasing with the warranty, see the Sale of Food and Drugs Act, 1899, s. 20 (4), *post*, p. 1974.
(*b*) As to marking on importation, see the Sale of Food and Drugs Act, 1899, s. 1, *post*, p. 1965. This section now applies also to margarine-cheese. See the Sale of Food and Drugs Act, 1899, s. 5, *post*, p. 1969, and to milk-blended butter. See the Butter and Margarine Act, 1907, s. 9, *post*, p. 2075.
(*c*) By s. 12 of the Butter and Margarine Act, 1907, *post*, p. 2076, except in the administrative county of London, s. 8 of the Margarine Act, 1887, shall have effect as if the words "inspector of weights and measures" were inserted after the word "nuisances."
(*d*) See this section, *ante*, p. 1584.
(*e*) Observe that the power conferred by this section is not, like that given by the Sale of Food and Drugs Act, 1875, s. 13, confined to the procuring of samples; the officer may examine and take samples from any package. As to forwarding a portion of any sample taken to the consignor, see the Sale of Food and Drugs Act, 1899, s. 10, *post*, p. 1971.
(*f*) See the definition of a local authority in s. 13, *post*, p. 1804.
(*g*) See s. 4, *ante*, p. 1801. General Orders as to the registration of manufactories of margarine, dated February 26th, 1900, and December 30th, 1909, have been issued under this section by the L. G. B., and will be found in App. II.
This section has been extended to the premises of wholesale dealers in margarine or margarine-cheese by the Sale of Food and Drugs Act, 1899, s. 7 (4), *post*, p. 1970, and by s. 1 (1) of the Butter and Margarine Act, 1907, *post*, p. 2072, this section, as amended by s. 7 of the Sale of Food and Drugs Act, 1899, has been applied to butter factories and places where milk-blended butter is manufactured or dealt in wholesale.

take samples without purchase.

Drugs Act, 1875 (*h*), may, without going through the form of purchase provided by that Act (*i*), but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples (*h*), take for the purposes of analysis samples of any butter, or substances purporting to be butter, which are exposed for sale, and are not marked Margarine, as provided by this Act; and any such substance not being marked shall be presumed to be exposed for sale as butter (*l*).

Appropriation of penalties.

11. Any part of any penalty recovered under this Act may, if the Court shall so direct, be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the court shall consider him entitled (*m*).

Proceedings.

12. All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sections twelve to twenty-eight inclusive of the Sale of Food and Drugs Act, 1875 (*n*), and all officers employed under that Act are hereby empowered and required to carry out the provisions of that Act.

Definition of local authority.

13. The expression "local authority" shall mean any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875 (*o*).

THE OPEN SPACES ACT, 1887.

(50 & 51 VICT. c. 32.) (*p*)

An Act for extending certain Provisions of the Metropolitan Open Spaces Acts, 1877 *and* 1881, *with Amendments, to Sanitary Districts throughout England, Wales, and Ireland; and for other purposes.*

[23rd August 1887.]

* * * * *

Amendment of 47 & 48 Vict. c. 72.

4. In the Disused Burial Grounds Act, 1884 (*q*) and in this Act, the expression "burial ground" shall have the same meaning as in the Metropolitan Open Spaces Act, 1881, as amended by this Act, and the

(*h*) The officers here referred to are those mentioned in the Sale of Food and Drugs Act, 1875, s. 13, *ante*, p. 1584. They include medical officers and inspectors of nuisances.

(*i*) In other words, the officers need not purchase; they may take samples.

(*l*) This section now applies also to margarine-cheese. See the Sale of Food and Drugs Act, 1899, s. 5, *post*, p. 1969.

(*m*) This section applies only as to private prosecutors. As to public prosecutors, see 38 & 39 Vict. c. 63, s. 26, *ante*, p. 1590. See *R.* v. *Titterton, Ex parte Quelch*, [1895] 2 Q. B. 61; 59 J. P. 327. This section and the following one are by s. 11 (2) of the Butter and Margarine Act, 1907, *post*, p. 2076, applied to proceedings under that Act with the substitution of references to that Act for references to the Margarine Act, 1887.

(*n*) *Ante*, pp. 1583—1592. Consequently, the notification, division, and analysis required by ss. 20 and 21 of the Act of 1875, are conditions precedent to proceedings for an offence against this Act (*Smart* v. *Watts*, [1895] 1 Q. B. 219; 59 J. P. 54). When samples have been taken by inspectors under the Butter and Margarine Act, 1907, s. 2, the conditions of the Sale of Food and Drugs Act, 1875, ss. 12—28, which require that a sample shall be divided, and a part left with the person from whom it was taken, and that a notice shall be given, need not be complied with in order that proceedings for a penalty may go on; nor in such a case does the time limit fixed by the Sale of Food and Drugs Act, 1899, s. 19, *post*, p. 1973, apply (*Monro* v. *Central Creamery Co.*, [1912] 1 K. B. 578; 76 J. P. 131).

(*o*) See 38 & 39 Vict. c. 63, s. 10, *ante*, p. 1583.

(*p*) This Act extended to urban and rural sanitary districts the provisions of the Acts in force in the metropolis relating to open spaces, viz., 40 & 41 Vict. c. 35, and 44 & 45 Vict. c. 34, and this Act was extended by 53 & 54 Vict. c. 15. It is now, however, repealed except so much of s. 4 as amends the Disused Burial Grounds Act, 1884, *ante*, p. 1788, by s. 23,

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(*q*) For note (*q*) see p. 1805.

expression "disused burial ground" shall mean any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council, and the expression "building" shall include any temporary or moveable building.

* * * * *

THE PUBLIC WORKS LOANS ACT, 1887.

(50 & 51 VICT. c. 37.) (*s*)

An Act to grant money for the purpose of certain Local Loans; and for other purposes relating to Local Loans. [16th September, 1887.]

1. This Act may be cited as "The Public Works Loans Act, 1887." Short title.

* * * * *

4. *Whereas under section seven of the Public Works Loans Act*, 1882 (*t*), *provision may be made for enabling any rating authority as therein defined to charge any fund or rate under their control for the purpose of aiding a public body in raising a loan for the construction of a harbour, pier, or other similar works, and it is expedient to extend the provisions of that section to certain other rating authorities: Be it therefore enacted that the expression "rating authority" as defined in that section shall include:* Power for certain local authorities to guarantee harbour loans, 45 & 46 Vict. c. 62.

(1) As regards England—

(a) Any authority being a rural sanitary authority under the Public Health Act, 1875, and the Acts amending the same; and 38 & 39 Vict. c. 55.

(b) *any justices in quarter sessions assembled* and any representative county body *which may be hereafter* created by Act of Parliament.

* * * * *

THE LOCAL AUTHORITIES (EXPENSES) ACT, 1887.

(50 & 51 VICT. c. 72.)

An Act to amend the Law relating to Expenses of Local Authorities. [16th September 1887.]

1. This Act may be cited as the Local Authorities (Expenses) Act, 1887. Short title.

2. In this Act— Definitions.

The expression "local authority" has the same meaning as in the Local Loans Act, 1875 (*u*). 38 & 39 Vict. c. 83.

and Schedule of the Open Spaces Act, 1906, which also wholly repeals 40 & 41 Vict. c. 35, and 44 & 45 Vict. c. 34, and 53 & 54 Vict. c. 15.

(*q*) *Ante*, p. 1788. See *In re Ecclesiastical Commissioners and New City of London Brewery Co., Ltd.*, [1895] 1 Ch. 702. The Metropolitan Open Spaces Act, 1881, as amended by this Act (now consolidated in the Open Spaces Act, 1906, *post*, p. 2059, defined "burial ground" as any ground whether consecrated or not which has been at any time *set apart* for the purposes of interment. As to the meaning of the words "set apart," see *Re Ponsford and Newport School Board*, [1894] 1 Ch. 454. If at the time land was so set apart there was in force an Order in Council prohibiting the opening of any new burial ground in the district so that it could never lawfully be used for the purposes for which it was set apart, such land was, nevertheless, a "disused burial ground" within this definition (*Re Bosworth and Gravesend Corporation*, [1905] 2 K. B. 426; 69 J. P. 337).

(*s*) A list of the other Public Works Loans Acts will be found, *ante*, p. 1608. The rest of this Act relates to the grant of moneys by Parliament for the year and to purely local matters. Italicised words repealed by the S. L. R. A., 1908.

(*t*) See this section, *ante*, p. 1762.

(*u*) See the definition of "local authority" in the Local Loans Act, 1875, s. 34, *ante*, p. 1605. The term includes sanitary authorities.

42 & 43 Vict. c. 6.

The expression "district auditor" has the same meaning as in the District Auditors Act, 1879 (*x*).

Limitation on power of district auditor.

3. Expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board (*y*).

THE ELECTRIC LIGHTING ACT, 1888.

(51 & 52 VICT. C. 12.) (*z*)

An Act to amend the Electric Lighting Act, 1882. [28th June, 1888.]

Consent of local authority generally required to Provisional Order for supply of electricity.

1. Notwithstanding anything in the Electric Lighting Act, 1882, no Provisional Order authorising the supply of electricity by any undertakers within the district of any local authority shall be granted by the Board of Trade except with the consent of such local authority, unless the Board of Trade, in any case in which the consent of such local authority is refused, are of opinion that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent. The grant of authority to any undertakers to supply electricity within any area, whether granted by licence or by means of a Provisional Order, shall not in any way hinder or restrict the granting of a licence or Provisional Order to the local authority, or to any other company or person within the same area (*a*).

(*x*) See this Act, *ante*, p. 1688.

(*y*) The effect of this provision is to enable the L. G. B. to sanction expenses which would otherwise be disallowed by the auditor, without waiting until disallowance and then remitting the surcharge on appeal.

Prior to the Borough Funds Act, 1903, an urban district council could not apply the district rate towards payment of the expenses of opposing a local Bill in Parliament not affecting their own duties, rights, or privileges, without first obtaining the consent of the ratepayers under s. 4 of the Borough Funds Act, 1872 (*ante*, p. 1568). It was held that the present section did not prevent the Court from intervening to restrain such unauthorised expenditure merely upon a suggestion that application would be made to the L. G. B. (*Att.-Gen.* v. *Rickmansworth U. D. C.* (1902), 66 J. P. 410; 86 L. T. 521). For a case in which an *interim* injunction was refused, see *Att.-Gen.* v. *East Barnet Valley U. D. C.* (1911), 75 J. P. 484, and the other cases cited therewith, *ante*, p. 546.

The precise intention of this Act will be explained by a quotation from the seventeenth report of the L. G. B. "We may here advert to the Local Authorities (Expenses) Act, 1887, which was passed with the object of diminishing the number of disallowances by the district auditors in the accounts of local authorities. . . . The power of sanction is intended to be used in those cases where the expenditure is incurred bonâ fide but in ignorance of the strict letter of the law, or inadvertently without the observance of requisite formalities, or under such circumstances as make it fair and equitable that the expenditure should not be disallowed by the auditor. . . . We do not regard the Act as intended to supply the want of legislative or other authority for particular expenditure or classes of expenditure, and as justifying us in giving prospective sanction to recurring expenses." It is, however, presumably under this Act that the Board sanction prospectively expenditure in celebrating such events as Coronations; see *e.g.*, an Order and Circular of April 18th, 1911.

It will be observed that, though an expense may be sanctioned under this Act, it is not legalised.

(*z*) This Act amends the Electric Lighting Act, 1882, *ante*, p. 1736. See also the Electric Lighting Clauses Act, 1899, *post*, p. 1917, and the Electric Lighting Act, 1909, *post*, p. 2113. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*a*) The first part of this section amends s. 4 of the Act of 1882, which enabled the Board of Trade to authorise any local authority, company, or person to supply electricity within any area without requiring such consents as are required to the granting of a licence. These consents are enumerated in s. 3 of the Act of 1882, and included the consent of the local authority; but the consent of the local authority will now be necessary in every case, unless

2. *Section twenty-seven of the Electric Lighting Act,* 1882, *is hereby repealed, and in lieu thereof the following provisions shall have effect; that is to say,* (*b*) Repeal of 45 & 46 Vict. c. 56, s. 27.

Where any undertakers are authorised by a Provisional Order or special Act to supply electricity within any area, any local authority within whose jurisdiction such area or any part thereof is situated may, within six months after the expiration of a period of forty-two years (*c*), or such shorter period as is specified in that behalf in the Provisional Order or in the special Act, from the date of the passing of the Act confirming such Provisional Order, or of such special Act, and within six months after the expiration of every subsequent period of ten years (*d*), or such shorter period as is specified in that behalf in the Provisional Order or in the special Act, by notice in writing require such undertakers to sell, and thereupon such undertakers shall sell to them their undertaking, or so much of the same as is within such jurisdiction, upon terms of paying the then value of all lands, buildings, works, materials, and plant of such undertakers suitable to and used by them for the purposes of their undertaking within such jurisdiction, such value to be in case of difference determined by arbitration: Provided that the value of such lands, buildings, works, materials, and plant shall be deemed to be their fair market value at the time of the purchase, due regard being had to the nature and then condition of such buildings, works, materials, and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working (*e*), and to the suitability of the same to the purposes of the undertaking, and, where a part only of the undertaking is purchased, to any loss occasioned by severance; but without any addition in respect of compulsory purchase, or of goodwill, or of any profits which may or might have been or be made from the undertaking, or of any similar considerations (*f*). The Board of Trade may determine any other questions which may arise in relation to such purchase, and may fix the date from which such purchase is to take effect, and from and after the date so fixed, or such other date as may be agreed upon between the parties, all lands, buildings, works, materials, and plant so purchased as aforesaid shall vest in the local authority which has made the purchase, freed from any debts, mortgages, or similar obligations of such undertakers or attaching to the undertaking, and the powers of such undertakers in relation to the supply of electricity under this Act or such Provisional Order or special Act as aforesaid within such area or part thereof as aforesaid shall absolutely cease and determine, and shall vest in the local authority aforesaid (*g*). Purchase of undertaking by local authority.

dispensed with by the Board of Trade for special reasons. As to the "local authority," see the Schedule to the Act of 1882, and s. 4 (5), *post*, p. 1809. The latter part of the section provides, in effect, that a licence or Provisional Order shall not confer a monopoly to supply electricity. *Cf. Hull Electric Co.* v. *Ottawa Electric Co.*, [1902] A. C. 237, but see s. 23 of the Electric Lighting Act, 1909, *post*, p. 2120, prohibiting competition by unauthorised undertakers.

(*b*) Italicised words repealed by the S. L. R. A., 1908.

(*c*) In the repealed section, this period was twenty-one years.

(*d*) In the repealed section, this period was seven years.

(*e*) These words from "and to the circumstance" are an addition to the words of the repealed section. See as to the principle of this addition the judgment of Lord Herschell in the analogous case of the purchase of a water supply undertaking in *Stockton and Middlesbrough Water Board* v. *Kirkleatham L. B.*, [1893] A. C. 444, at pp. 449, 450; 57 J. P. 772. This case was distinguished in a colonial case, *Perth Gas Co., Ltd.* v. *Perth Corporation*, [1911] A. C., at p. 514.

(*f*) As to capital expenditure subsequent to the notice to treat, see *Metropolitan Electric Supply* v. *St. Marylebone Borough Council* (1903), 67 J. P. 382; 1 L. G. R. 673.

(*g*) See s. 7 of the Electric Lighting Act, 1909, *post*, p. 2116, as to the purchase of generating stations, works and mains situated outside the district or districts supplied

Power to vary terms of sale contained in last section.

3. Notwithstanding anything in the last preceding section contained, the Board of Trade may by any Provisional Order to be made by them under the Electric Lighting Act, 1882, if they think fit, vary the terms upon which any local authority may require the undertakers to sell, and upon which the undertakers shall be required to sell to such local authority their undertaking or so much of the same as is within the jurisdiction of such local authority under the said section, in such manner as may have been agreed upon between such local authority and the undertakers.

Restrictions as to placing of electric lines, etc.

4.—(1) Where in any case any electric line or other work may have been laid down or erected in, over, along, across, or under any street, for the purpose of supplying electricity, or may have been laid down or erected in any other position for such purpose in such a manner as not to be entirely enclosed within any building or buildings, or where any electric line or work so laid down or erected may be used for such purpose otherwise than under and subject to the provisions of a licence, order, or special Act, the Board of Trade, if they think fit, may, by notice in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, to be served upon the body or person owning or using or entitled to use such electric line or work, require that such electric line or work shall be continued and used only in accordance with such conditions and subject to such regulations for the protection of the public safety and of the electric lines and works of the Postmaster-General (*h*), and of other electric lines and works lawfully placed in any position and used for telegraphic communication (*i*), as the Board of Trade may by or in pursuance of such notice prescribe, and in case of non-compliance with the said regulations, then the Board of Trade may require such body or person to remove such electric line or work: Provided that nothing in this sub-section shall apply to any electric line or work laid down or erected by any body or person for the supply of electricity generated upon any premises occupied by such body or person to any other part of such premises (*k*).

(2) Where in any case any electric line or work is used for the supply of electricity in such a manner as to injuriously affect any telegraphic line of the Postmaster-General (*h*), or to affect the telegraphic communication through any such line, the Postmaster-General may, by notice to be served upon the body or person owning or using or entitled to use such electric line or work, require that such supply be continued only in accordance with such conditions and regulations for the protection of the telegraphic lines of the

by the undertakers. See the same section as to one authority transferring its powers of purchase to another authority supplied by the undertakers. A Provisional Order gave a corporation power to purchase compulsorily the undertaking of an electric lighting company, upon the terms of issuing to the company such an amount of corporation stock as would produce in dividends an annuity of 5 per cent. upon the capital properly expended by the company. By another Provisional Order the power of the corporation to issue irredeemable stock was taken away. The Acts confirming these Orders received the Royal Assent on the same day :—*Held*, that the stock to be issued to the company was irredeemable stock; that the corporation had no longer, even by implication, power to issue such stock; and that consequently their power of compulsory purchase could not be enforced (*Sheffield Corporation* v. *Sheffield Electric Light and Power Co.*, [1898] 1 Ch. 203; 62 J. P. 87). As to stamp duty on a purchase of an electric light undertaking, see *Att.-Gen.* v. *Eastbourne Corporation*, [1904] A. C. 155; 68 J. P. 393.

(*h*) As to the protection of the Postmaster-General, see also s. 26 of the Electric Lighting Act, 1882, *ante*, p. 1748, and Sched. (14) (79) of the Electric Lighting Clauses Act, 1899, *post*, pp. 1923, 1946.

(*i*) As to electric trams, see *National Telephone Co.* v. *Baker*, *ante*, p. 1745.

(*k*) This sub-section is limited in its application to wires laid down by any company or person without statutory authority. The Board of Trade have made regulations under it, and these regulations follow the present Act in this Work. The wires to which this sub-section relates would, apparently, be subject to Part II. of the P. H. A., 1890, *ante*, p. 825.

Postmaster-General and the telegraphic communication through the same as he may by or in pursuance of such notice prescribe, and in default of compliance with such conditions and regulations the Postmaster-General may require that the supply of electricity through such electric line or work shall be forthwith discontinued : Provided that nothing in this sub-section shall apply to the supply of electricity through any electric line or work laid down or erected under and subject to the provisions of any licence, order, or special Act, or which may be used in accordance with any conditions or regulations prescribed by the Board of Trade by or in pursuance of any notice given by them under this section.

(3) If any body or person fails to comply with the requirements of any notice which may be served upon them or him under this section, such body or person shall be liable to a penalty not exceeding twenty pounds for every such offence, to be recovered summarily, and any court of summary jurisdiction, on complaint made, may make an order directing and authorising the removal of any electric line or work specified in such notice by such person and upon such terms as they may think fit.

(4) Any notice authorised to be served under this section upon any body or person may be served by the same being addressed to such body or person, and being left at or transmitted through the post to any office of such body or the usual or last known place of abode of such person ; and any notice so served by post shall be deemed to have been served at the time when the letter containing the notice would be delivered in the usual course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

(5) In this section terms and expressions to which by the Electric Lighting Act, 1882, meanings are assigned shall have the same respective meanings, provided that the term " street " shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place whatever, and the expression " telegraphic line " shall have the meaning assigned to it by the Telegraph Act, 1878 (*l*). 45 & 46 Vict. c. 56.

(6) Nothing in this section shall apply to any electric line or work of the Postmaster-General, or to any other electric line or work used or to be used solely for telegraphic purposes, except by way of protection, as in this section provided. 41 & 42 Vict. c. 76.

5. This Act may be cited as the Electric Lighting Act, 1888 ; and the Electric Lighting Act, 1882, and this Act shall be read and construed together as one Act, and may be cited together for all purposes as the Electric Lighting Acts, 1882 and 1888. Short title.

(*l*) See the interpretation clauses in the Act of 1882, ss. 31, 32, *ante*, p. 1749.
The Telegraph Act, 1878, s. 2, defines a telegraphic line to mean telegraph posts, and any work (within the meaning of the Telegraph Act, 1863), and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever, used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication, and includes any portion of a telegraphic line as defined by that Act. By s. 3 of the Telegraph Act, 1863, the term " work " includes telegraphs and posts.

REGULATIONS PRESCRIBED BY THE BOARD OF TRADE UNDER SECTION FOUR OF THE ELECTRIC LIGHTING ACT, 1888.

REGULATIONS.

DEFINITIONS.

In the following regulations:

The expression "energy" means electrical energy, and for the purposes of the Electric Lighting Act, 1888, and these regulations, electrical energy shall be deemed to be an agency within the meaning of the word "electricity" as defined in the Electric Lighting Act, 1882.

The expression "owner" means any body or person owning or using or entitled to use any electric lines or works, upon whom notice has been served by the Board of Trade requiring that such electric lines or works shall be continued and used only in accordance with these regulations.

The expression "consumer" means any body or person supplied with energy by the owner.

The expression "sub-station" means any premises in which energy is transformed or converted for the purpose of supply to consumers, and which are large enough to admit the entrance of a person after the transforming or converting apparatus is in position, provided that for the purpose of these regulations any place within any such premises which is used solely for some purpose other than such transformation or conversion shall not be deemed to form part of a sub-station.

The expression "overhead line" means any electric line which is placed above ground and in the open air.

The expression "service line" means an electric line through which energy may be supplied or intended to be supplied by the owner to any premises other than the premises where the energy is generated.

The expression "pressure" means the difference of electrical potential between any two conductors through which a supply of energy is given, or between any part of either conductor and the earth; and

(a) where the conditions of the supply are such that the pressure at any pair of consumer's terminals does not exceed 250 volts, the supply shall be deemed a low pressure supply.

(b) Where the conditions of the supply are such that the pressure exceeds 250 volts but does not exceed 650 volts, the supply shall be deemed a medium pressure supply.

Other expressions to which meanings are assigned in the Electric Lighting Acts, 1882 and 1888, have the same respective meanings in these regulations.

GENERAL.

Regulations not to imply power to interfere with streets.

(1) Nothing in these regulations shall be deemed to authorise the owner to break up or interfere with any street.

Pressure exceeding 250 volts.

(2) Where the pressure of the supply exceeds 250 volts, all wires, switches and metal work in connection with the supply shall be so enclosed or shall be fixed in such a manner that there shall be no risk of any shock being obtained by inadvertence or in the ordinary handling thereof.

Pressure exceeding 650 volts.

(3) Where the pressure of the supply exceeds 650 volts, the supply shall be subject to such further regulations as the Board of Trade may make, or shall be given on such conditions as they may prescribe.

Insulation test.

(4) The insulation of every electric circuit (whether connected with earth in accordance with these regulations or not) including all machinery and apparatus, forming part of or in connection with that circuit, shall be so maintained that the leakage current shall not exceed one-thousandth part of the maximum current; and suitable means shall be provided for the indication and localisation of leakage. Every leakage shall be remedied without delay. Every such circuit shall be periodically tested for insulation.

Precautions against shock or fire.

(5) In the use or delivery of energy, the owner shall exercise all due precautions so as to avoid the risk of causing electric shock or fire, and shall be responsible for all electric lines, fittings and apparatus belonging to him, or under his control, being maintained in a safe condition.

(6) Any electric line or any support therefor exposed to liability to injury from lightning, shall be efficiently protected against such liability. Protection from lightning.

(7) All mains below ground shall be so laid and protected as to avoid risk of damage by accumulation of gas or leakage of electric current. Protection of mains.

(8) Where any accident by explosion or fire, or any other accident of such kind as to have caused or to be likely to have caused loss of life or personal injury has occurred at any part of any electric line or other works, the owner shall give immediate notice thereof to the Board of Trade. Reports of accidents to Board of Trade.

(9) Every reasonable means shall be employed in the placing and use of electric lines to prevent injurious affection, whether by induction or otherwise, to any electric lines or other works of the Postmaster-General or the telegraphic communication through any such lines. Precautions against injurious affection by induction.

(10) (a) The owner on receipt of these regulations shall forthwith serve upon the Postmaster-General a notice describing every electric line used for the supply of energy, together with a plan showing the mode and position in which such electric line is laid. Notice to Postmaster-General.

(b) The Postmaster-General, upon consideration of such notice and plan, may require such alteration in the position and mode of laying, or mode of use of such electric line, or compliance with such other conditions as he may think necessary for the due protection of his electric lines or other works, and any failure on the part of the owner to comply with such requirements shall be deemed to be a non-compliance with these regulations.

(c) Any notice required to be served upon the Postmaster-General under these regulations may be served by being addressed to him, and left at, or transmitted through the post to the General Post Office, London, and any notice required to be served on the owner may be served by being addressed to him and left at, or transmitted through the post to, his office or last known place of address.

Overhead Lines for Low Pressure and Medium Pressure Continuous Current Supply and for Low Pressure Alternating Current Supply.

(11) All overhead lines shall be attached to insulators, and shall be so guarded that they cannot fall away from the support. Attachment of overhead lines.

(12) An overhead line shall not in any part thereof be at a less height from the ground than 22 feet, except with the consent of the Board of Trade, and shall not be accessible to any person without the use of a ladder or other mechanical means. Height from ground, etc.

(13) Where an overhead line crosses a street, the angle between the line and the direction of the street at the place of crossing shall, where practicable, be 60 degrees at least, and the spans shall be as short as possible. Angle of crossing thoroughfares.

(14) Where an overhead line crosses, or is in proximity to, any wire or metal, precautions shall be taken by the owner against the possibility of the line coming into contact with the wire or metal, or of the wire or metal coming into contact with the line by breakage or otherwise. Lines crossing metallic substance.

(15) Every support for an overhead line shall be of durable material, and shall be properly stayed against forces due to wind pressure, change of direction of the line, or unequal lengths of span. Strength of supports.

(16) The interval between any two wooden poles used singly as supports for an overhead line shall not exceed 200 feet. In the case of supports other than single wooden poles the intervals between the supports shall be such as may be prescribed by the Board of Trade. Maximum intervals between supports.

(17) The factor of safety shall be for overhead lines at least 5, and for wooden poles at least 10, and for iron or steel structures at least 6, taking the maximum possible wind pressure at 30 pounds per square foot. No addition need be made for a possible accumulation of snow. Factors of safety.

(18) Service lines from overhead lines shall be led as directly as possible to insulators firmly attached to some portion of the consumer's premises which is not accessible to any person without the use of a ladder or other special appliance. Every portion of any service line which is outside a building, and is within 7 feet from the building, shall be efficiently protected by insulating material. Service lines from overhead lines.

Maintenance.

(19) Every overhead line, including its supports and all the structural parts and electrical appliances and devices belonging to or connected with the line, shall be duly and efficiently supervised and maintained as regards both electrical and mechanical conditions.

Supply from two-wire system.

(20) Where a supply is given by overhead lines from a two-wire system, with the negative conductor connected with earth, the positive conductor shall be placed above the negative conductor in such a manner that in the event of breakage it must fall on the negative conductor.

Supply from three-wire system.

(21) Where a supply is given by overhead lines on the three-wire system, the positive and negative conductors shall be placed side by side above the intermediate conductor. The intermediate conductor shall consist of two wires placed side by side at a distance apart greater than that between the positive and negative conductors, and connected in each span by two cross wires, placed in such a manner that in the event of either the positive or negative conductor breaking it shall fall on one at least of the cross wires.

Disused overhead lines to be removed.

(22) The owner shall remove any overhead line upon ceasing to use it for the supply of energy, unless upon so ceasing he satisfies the Board of Trade that he intends to bring it into use again within a reasonable time.

Overhead lines for other pressures.

(23) Overhead lines for pressures exceeding medium pressure continuous current or low pressure alternating current shall be subject to such further regulations as the Board of Trade may make or such conditions as they may prescribe.

SUB-STATIONS AND TRANSFORMERS.

Sub-stations and transformers.

(24) Sub-stations shall be established in suitable places and shall be in the sole occupation and charge of the owner and subject to any requirements of the Home Office. Where transformers are used in any other premises (not being sub-stations as defined for the purposes of these regulations) they shall be so guarded and protected as to avoid the risk of causing electric shock.

COMPULSORY CONNECTION OF A THREE-WIRE SYSTEM WITH EARTH.

Compulsory connection with earth of a three-wire system.

(25) Where the pressure of a supply between the adjacent conductors of a three-wire system of mains exceeds 125 volts, the intermediate conductor shall be connected with earth, in accordance with the following conditions:

(a) The connection with earth of the intermediate conductor shall be made at one point only on each distinct circuit, namely, at the generating station, sub-station, or transformer, and the insulation of the circuit shall be efficiently maintained at all other parts.

(b) The current from the intermediate conductor to earth shall be continuously recorded, and if it at any time exceed one-thousandth part of the maximum supply current, steps shall be immediately taken to improve the insulation of the system.

OPTIONAL CONNECTION OF OTHER CIRCUITS WITH EARTH.

Optional connection with earth of other circuits.

(26) The owner may, with the approval of the Board of Trade given with the concurrence of the Postmaster-General (but not otherwise), connect any other circuit with earth, provided the following conditions are complied with (namely):

I.—*General.*

(1) The connection with earth shall be made only where energy is delivered to each circuit, that is to say, at a generating station, sub-station or transformer, and shall be made at a neutral point in the circuit and in such a manner as will ensure at all times an immediate and safe discharge of energy.

(2) The connection with earth shall be efficiently maintained, except when it is interrupted by means of a switch or link for the purpose of periodical tests for ascertaining whether any current is passing by means of the connection to earth.

(3) The insulation of the mains shall be efficiently maintained at all other parts.

(4) Tests shall be periodically made to ascertain whether any current is passing by means of the connection to earth, and if at any time the current so passing exceeds one-thousandth part of the maximum supply current of the circuit, steps shall be immediately taken to improve the insulation.

II.—*Special.*

A.—Separate or three- or four-core mains used for alternating current where a low pressure supply is given between a phase and the neutral point or where the pressure between any two conductors exceeds 250 volts.

The connection with earth shall be made in the case of

(a) A single phase supply, at the neutral point on the winding of the transformer;

(b) A two-phase three-wire supply, by means of the third wire;

(c) A two-phase four-wire supply, at the neutral point on the winding;

(d) A three-phase three-wire or four-wire supply, at the neutral point on the star-winding.

B.—Concentric mains used either for continuous or for alternating current.

The connection with earth shall be made by means of the external conductor.

Nothing in these regulations shall be deemed to be in substitution for regulations made under the Factory and Workshop Act, 1901; the Coal Mines Regulation Act, 1887; and the Metalliferous Mines Regulation Act, 1872.

N.B.—These regulations are prescribed subject to the power of the Board of Trade to prescribe such further or other regulations as they may think expedient.

THE GLEBE LANDS ACT, 1888.

(51 & 52 VICT. c. 20.) (*m*)

An Act to facilitate the sale of Glebe Lands. [7th August 1888.].

1. This Act may be cited as the Glebe Lands Act, 1888. Short title and extent.

This Act shall not extend to Scotland or Ireland.

* * * * *

8.—(1) For the purpose of facilitating the acquisition of land by cottagers, labourers, and others, it shall be the duty of the Land Commissioners (*n*) in giving their approval of a sale under this Act (*o*), either to require as a condition thereof that the land or some part thereof shall be offered for sale in small parcels, or to the sanitary authority of a sanitary district for the purposes of the Allotments Act, 1887, or to satisfy themselves that such offer is not practicable without diminishing the price which can be obtained for the glebe land on a sale (*p*). Supplemental provisions as to sale. 50 & 51 Vict. c. 48

(2) Before approving of a sale under this Act of glebe land of any benefice, the Land Commissioners (*n*) shall require such notice of the proposed sale to be given as they think sufficient to give information thereof to the parishioners (*q*).

(*m*) This Act is included in the present Work only by reason of the provision in s. 8 relating to the sale of some of the land to which it applies to sanitary authorities for the purpose of allotments.

(*n*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*o*) This refers to a sale of glebe land under the Act.

(*p*) See Sale of Glebe Land Rules, 1897, rr. 5, 7, and Stat. R. & O., 1897, p. 9.

(*q*) See Sale of Glebe Land Rules, 1897, r. 1 and Form 4, Stat. R. & O., 1897, pp. 8, 14.

(3) The approval of the Land Commissioners (*r*) of a sale under this Act may be signified in the prescribed manner, and shall be conclusive evidence that the requirements of this Act with respect to the sale have been complied with.

45 & 46 Vict. c. 38

(4) Subject to the provisions of this Act, the provisions of the Settled Land Act, 1882, with respect to the sale of land by a tenant for life shall, so far as circumstances admit, apply to a sale under this Act by an incumbent in like manner as if he were the tenant for life of the land, and accordingly he shall have the like power with respect to contracts as a tenant for life under that Act, and may do all things necessary and proper for carrying into effect a sale under this Act.

* * * * *

THE RAILWAY AND CANAL TRAFFIC ACT, 1888.

(51 & 52 VICT. c. 25.) (*s*)

An Act for the better regulation of Railway and Canal Traffic, and for other purposes. [10th August 1888.]

Short title and construction. 36 & 37 Vict. c. 48.

1. This Act may be cited as the Railway and Canal Traffic Act, 1888. This Act shall be construed as one with the Regulation of Railways Act, 1873, and the Acts amending it; and those Acts and this Act may be cited together as the Railway and Canal Traffic Acts, 1873 and 1888.

PART I.

COURT AND PROCEDURE OF RAILWAY AND CANAL COMMISSIONERS.

Establishment of Railway and Canal Commission.

* * * * *

Provision for complaints by public authority in certain cases.

7.—(1) Any of the following authorities, that is to say—

(a) any of the following local authorities, namely, any harbour board, or conservancy authority, the Common Council of the City of London, any council of a city or borough, any representative county body *which may be* created by *an* Act *passed in the present or any future session of* Parliament, *any justices in quarter sessions assembled, the Commissioners of Supply of any county in Scotland, the Metropolitan Board of Works* (*t*) or any urban sanitary authority not being a council as aforesaid, or any rural sanitary authority (*u*); or

. . . . .

may make to the Commissioners any complaint which the Commissioners have jurisdiction to determine (*v*), and may do so without proof that such authority is aggrieved by the matter complained of, and any of such authori-

(*r*) Now the Board of Agriculture and Fisheries. See note (*a*), *ante*, p. 1627.

(*s*) This Act confers certain powers of making complaints upon sanitary authorities. See ss. 7, 16, 29, 31, 45 (1), (7). Only such parts of the Act as bear directly upon such complaints have been here inserted. The Act has been extended by the Railway and Canal Traffic Act, 1894.

(*t*) Italicised words repealed by S. L. R. A., 1908.

(*u*) For an example of a complaint by a local authority, see *Maidstone Town Council* v. *S. E. Rail. Co. and L. C. & D. Rail. Co.* (1891), 7 Rail. C. 99. See also *West Sussex C. C.* v. *L. B. & S. C. Rail. Co.*, Times, February 24th, 1892.

(*v*) As to the complaints which the Commissioners have power to determine, see s. 8 and succeeding section, especially s. 9, and ss. 1 and 4 of the Railway and Canal Traffic Act, 1894. See also *Darlaston L. B.* v. *L. & N. W. Rail. Co.*, [1894] 2 Q. B. 694; overruling *Winsford L. B.* v. *Cheshire Lines Committee* (1890), 24 Q. B. D. 456. See also s. 54, *post*, p. 1829, as to the costs of local authorities.

ties may appear in opposition to any complaint which the Commissioners have jurisdiction to determine in any case where such authority, or the persons represented by them, appear to the Commissioners to be likely to be affected by any determination of the Commissioners upon such complaint.

. . . . .

Jurisdiction.

8. There shall be transferred to and vested in the Commissioners all the jurisdiction and powers which at the commencement of this Act were vested in, or capable of being exercised by the Railway Commissioners, whether under the Regulation of Railways Act, 1873, or any other Act, or otherwise, and any reference to the Railway Commissioners in the Regulation of Railways Act, 1873, or in any other Act (*w*), or in any document, shall, *from and after the commencement of this Act* (*x*), be construed to refer to the Railway and Canal Commission established by this Act.

Jurisdiction of railway commissioners transferred to the commission.

9. Where any enactment in a special Act—

(a) contains provisions relating to traffic facilities, undue preference, or other matters mentioned in section two of the Railway and Canal Traffic Act, 1854 (*y*), or

(b) requires a company to which this Part of this Act applies to provide any station, road, or other similar work for public accommodation, or

(c) otherwise imposes on a company to which this Part of this Act applies any obligation in favour of the public or any individual,

or where any Act contains provisions relating to private branch railways or private sidings, the Commissioners shall have the like jurisdiction to hear and determine a complaint of a contravention of the enactment as the Commissioners have to hear and determine a complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.

Jurisdiction of Commissioners under special Acts. 17 & 18 Vict. c. 31.

10. Where any question or dispute arises, involving the legality of any toll, rate, or charge, or portion of a toll, rate, or charge, charged or sought to be charged for merchandise traffic by a company to which this Part of this Act applies, the Commissioners shall have jurisdiction to hear and determine the same, and to enforce payment of such toll, rate, or charge, or so much thereof as the Commissioners decide to be legal.

Jurisdiction over tolls and rates.

11. Nothing in any agreement, whether made before or after the passing of this Act, which has not been confirmed by Act or by the Board of Trade, or by the Commissioners under the Regulation of Railways Act, 1873, or this Act, shall render a company to which this Part of this Act applies unable to afford, or shall authorise such company to refuse, such reasonable facilities for traffic as may in the opinion of the Commissioners be required in the interests of the public, or shall prevent the Commissioners from making or enforcing any order with respect to such facilities.

Jurisdiction to order traffic facilities, notwithstanding agreements.

12. Where the Commissioners have jurisdiction to hear and determine any matter, they may, in addition to or in substitution for any other relief, award to any complaining party who is aggrieved such damages as they find him to have sustained; and such award of damages shall be in complete satisfaction of any claim for damages, including repayment of overcharges, which, but for this Act, such party would have had by reason of the matter of complaint:

Power to award damages.

(*w*) Especially the Railway and Canal Traffic Act, 1854.
(*x*) Italicised words repealed by S.L.R.A. 1908.
(*y*) See this section recited at length in s. 25, *post*, p. 1820.

Provided that such damages shall not be awarded unless complaint has been made to the Commissioners within one year from the discovery by the party aggrieved of the matter complained of.

The Commissioners may ascertain the amount of such damages either by trial before themselves, or by directing an inquiry to be taken before one or more of themselves or before some officer of their court.

No damages where rates published under certain conditions.

13. In cases of complaint of undue preference no damages shall be awarded if the Commissioners shall find that the rates complained of have, for the period during which such rates have been in operation, been duly published in the rate books of the railway company kept at their stations in accordance with section fourteen of the Regulation of Railways Act, 1873, as amended by this Act (*z*), unless and until the party complaining shall have given written notice to the railway company requiring them to abstain from or remedy the matter of complaint, and the railway company shall have failed, within a reasonable time, to comply with such requirements in such a manner as the Commissioners shall think reasonable.

*   *   *   *   *

Power to apportion expenses between railway company and applicants for works.

16.—(1) Where the Board of Trade or the Commissioners, in the exercise of any power given by any general or special Act, on application order a company to which this Part of this Act applies, to provide a bridge, subway, or approach, or any work of a similar character, the Board of Trade or the Commissioners, as the case may be, may require as a condition of making the order that an agreement to pay the whole or a portion of the expenses of complying with the order shall be entered into by the applicants or some of them, or such other persons as the Board of Trade or Commissioners think fit, and any of the following local authorities, namely, any sanitary authority (*a*), highway board, surveyor of highways acting with the consent of the vestry of his parish, or any other authority having power to levy rates, shall have power, if such authority think fit, to enter into any such agreement as is sanctioned by the Board of Trade or Commissioners for the purpose of the order.

(2) In such case any question respecting the persons by whom or the proportions in which the expenses of complying with the order are to be defrayed may, on the application of any party to the application, or on a certificate of the Board of Trade, be determined by the Commissioners.

(3) In this section the expression "parish" shall have the same meaning as the same expression has in the Acts relating to highways; and the expression "the consent of the vestry of his parish" shall, in any place where there is no vestry meeting, mean the consent of a meeting of inhabitants contributing to the highway rates, provided that the same notice shall have been given of such a meeting as would be required by law for the assembling of a meeting in vestry.

Appeals.

Appeals on certain questions to superior court of appeal.

17.—(1) No appeal shall lie from the Commissioners upon a question of fact (*b*), or upon any question regarding the locus standi of a complainant.

(2) Save as otherwise provided by this Act, an appeal shall lie from the Commissioners to a superior court of appeal

(*z*) Section 34 of this Act amends s. 14 of the Act of 1873 as to the place of publication of rates in respect of traffic at places other than stations. Section 14 of the Regulation of Railways Act, 1873, is extended by s. 3 of the Railway and Canal Traffic Act, 1894.

(*a*) See also powers conferred on urban sanitary authorities under s. 147 of the P. H. A., 1875, *ante*, p. 264.

(*b*) See *Vickers* v. *Midland Rail. Co.* (1901), 18 T. L. R. 769; *National Telephone Co., Ltd.* v. *Postmaster-General*, [1913] A. C. 546.

(3) An appeal shall not be brought except in conformity with such rules of court as may from time to time be made in relation to such appeals by the authority having power to make rules of court for the superior court of appeal (*c*).

(4) On the hearing of an appeal the court of appeal may draw all such inferences as are not inconsistent with the facts expressly found, and are necessary for determining the question of law, and shall have all such powers for that purpose as if the appeal were an appeal from a judgment of a superior court, and may make any order which the Commissioners could have made, and also any such further or other order as may be just, and the costs of and incidental to an appeal shall be in the discretion of the court of appeal, but no Commissioner shall be liable to any costs by reason or in respect of any appeal.

(5) The decision of the superior court of appeal shall be final: Provided that where there has been a difference of opinion between any two of such superior courts of appeal, and superior court of appeal in which a matter affected by such difference of opinion is pending may give leave to appeal to the House of Lords, on such terms as to costs as such court shall determine.

(6) Save as provided by this Act, an order or proceeding of the Commissioners shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, certiorari, or otherwise, either at the instance of the Crown or otherwise.

Supplemental.

18.—(1) For the purposes of this Act the Commissioners shall have full jurisdiction to hear and determine all matters whether of law or of fact, and shall as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of their orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of their jurisdiction under this Act, or otherwise for carrying this Act into effect, have all such powers, rights, and privileges as are vested in a superior court: Provided that no person shall be punished for contempt of court, except with the consent of an ex officio Commissioner. General powers and enforcement of orders.

(2) The Commissioners may review and rescind or vary any order made by them; but, save as is by this Act provided, every decision or order of the Commissioners shall be final.

19. The costs of and incidental to every proceeding before the Commissioners shall be in the discretion of the Commissioners, who may order by whom and to whom the same are to be paid, and by whom the same are to be taxed and allowed (*d*). Costs.

20.—(1) The Commissioners may from time to time, with the approval of the Lord Chancellor and the President of the Board of Trade, make, rescind, and vary general rules for their procedure and practice under this Act, and generally for carrying into effect this Part of this Act. Power to make rules.

(2) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not then sitting within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if they were enacted by this Act (*e*).

* * * * *

(*c*) See R. S. C., April 10th, 1889 (Stat. R. & O. (rev.), Vol. VII., p. 340; (1889), W. N. p. 189), applying R. S. C., Order LVIII.

(*d*) But see the Railway and Canal Traffic Act, 1894, s. 2.

(*e*) See the Railway and Canal Commission Rules, 1889, dated February 22nd 1889, (Parl. Paper, 1889 (44)).

Company to which Part I. applies.

23. This Part of this Act shall apply to any railway company, and to any canal company, and to any railway and canal company.

PART II.

TRAFFIC.

Revised classification of traffic and schedule of rates.

24.—(1) Notwithstanding any provision in any general or special Act, every railway company shall submit to the Board of Trade a revised classification of merchandise traffic, and a revised schedule of maximum rates and charges applicable thereto, proposed to be charged by such railway company, and shall fully state in such classification and schedule the nature and amounts of all terminal charges proposed to be authorised in respect of each class of traffic, and the circumstances under which such terminal charges are proposed to be made. In the determination of the terminal charges of any railway company regard shall be had only to the expenditure reasonably necessary to provide the accommodation in respect of which such charges are made, irrespective of the outlay which may have been actually incurred by the railway company in providing that accommodation.

(2) The classification and schedule shall be submitted within six months from the passing of this Act, or such further time as the Board of Trade may, in any particular case, permit, and shall be published in such manner as the Board of Trade may direct (*f*).

(3) The Board of Trade shall consider the classification and schedule, and any objections thereto, which may be lodged with them on or before the prescribed time, and in the prescribed manner, and shall communicate with the railway company and the persons (if any) who have lodged objections, for the purpose of arranging the differences which may have arisen.

(4) If, after hearing all parties whom the Board of Trade consider to be entitled to be heard before them respecting the classification and schedule, the Board of Trade come to an agreement with the railway company as to the classification and schedule, they shall embody the agreed classification and schedule in a Provisional Order, and shall make a report thereon, to be submitted to Parliament, containing such observations as they think fit in relation to the agreed classification and schedule.

(5) When any agreed classification and schedule have been embodied in a Provisional Order, the Board of Trade, as soon as they conveniently can after the making of the Provisional Order (of which the railway company shall be deemed to be the promoters), shall procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill.

(6) In any case in which a railway company fails within the time mentioned in this section to submit a classification and schedule to the Board of Trade, and also in every case in which a railway company has submitted to the Board of Trade a classification and schedule, and after hearing all parties whom the Board of Trade consider to be entitled to be heard before them, the Board of Trade are unable to come to an agreement with the railway company as to the railway company's classification and schedule, the Board of Trade shall determine the classification of traffic which, in the opinion of the Board of Trade, ought to be adopted by the railway company, and the schedule of maximum rates and charges, including all terminal charges proposed to be authorised applicable to such classification which would, in the opinion of the Board of Trade, be just and reasonable, and shall make a

(*f*) Under s. 35 the Board of Trade have power to make rules as to the submission and publication of such classification and schedule, and have made rules accordingly. See Parl. Papers, 1888 (402), as to railways, and (436) as to canals

report, to be submitted to Parliament, containing such observations as they may think fit in relation to the said classification and schedule, and calling attention to the points therein on which differences which have arisen have not been arranged.

(7) After the commencement of the session of Parliament next after that in which the said report of the Board of Trade has been submitted to Parliament, the railway company may apply to the Board of Trade to submit to Parliament the question of the classification and schedule which ought to be adopted by the railway company, and the Board of Trade shall on such application, and in any case may embody in a Provisional Order such classification and schedule as in the opinion of the Board of Trade ought to be adopted by the railway company, and procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill.

(8) If, while any Bill to confirm a Provisional Order made by the Board of Trade under this section is pending in either House of Parliament, a petition is presented against the Bill or any classification and schedule comprised therein, the Bill, so far as it relates to the matter petitioned against, shall be referred to a select committee, or if the two House of Parliament think fit so to order, to a joint committee of such Houses, and the petitioner shall be allowed to appear and oppose as in the case of a private Bill (*g*).

(9) In preparing, revising, and settling the classifications and schedules of rates and charges, the Board of Trade may consult and employ such skilled persons as they may deem necessary or desirable ; and they may pay to such persons such remuneration as they may think fit and as the Treasury may approve.

(10) The Act of Parliament confirming any Provisional Order made under this section shall be a public general Act, and the rates and charges mentioned in a Provisional Order as confirmed by such Act shall, from and after the Act coming into operation, be the rates and charges which the railway company shall be entitled to charge and make.

(11) At any time after the confirmation of any Provisional Order under this section any railway company may, and any person, upon giving not less than twenty-one days notice to the railway company may, apply in the prescribed manner to the Board of Trade to amend any classification and schedule by adding thereto any articles, matters, or things, and the Board of Trade may hear and determine such application, and classify and deal with the articles, matters, or things referred to therein in such manner as the Board of Trade shall think right (*h*). Every determination of the Board of Trade under this sub-section shall forthwith be published in the London Gazette, and shall take effect as from the date of the publication thereof.

(12) Nothing in this section shall apply to any remuneration payable by the Postmaster-General to any railway company for the conveyance of mails, letter bags, or parcels under any general or special Act relating to the conveyance of mails, or under the Post Office (Parcels) Act, 1882. 45 & 46 Vict. c. 74.

(*g*) The Railway and Canal Traffic (Provisional Order) Amendment Act, 1891, *post*, p. 1854, provides that every governing body within the meaning of the Borough Funds Act, 1872, *ante*, p. 1566, and every county council shall be entitled to be a petitioner, and to appear and oppose any Provisional Order made under this section, and to provide or contribute towards providing the expenses of the appearance out of rates under their control, as if the Bill were a local or personal Bill within the meaning of the Borough Funds Act, 1872. The Railway and Canal Traffic Act, 1892, *post*, p. 1870, provides that a Provisional Order may be made, and a Bill to confirm it may be introduced at any time after hearing the parties as provided in sub-s. (4).

(*h*) For an example of the exercise of this power by the Board of Trade, see *Ex parte L. & N. W. Rail. Co.* (1909), 100 L. T. 998.

(13) Nothing in this section shall apply to any remuneration payable by the Secretary of State for War to any railway company for the conveyance of War Office stores under the powers conferred by the Cheap Trains Act, 1883.

46 & 47 Vict. c. 34.

Provisions as in through traffic.

25. (*i*) *Whereas by section two of the Railway and Canal Traffic Act, 1854, it is enacted that every railway company and canal company, and railway and canal company shall, according to their respective powers, afford all reasonable facilities* (*k*) *for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal or railway, and canal communication* (*l*), *or which have the terminus station or wharf of the one near the terminus station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals of the several companies be at all times afforded to the public in that behalf:*

And whereas it is expedient to explain and amend the said enactment:

Be it therefore enacted, that—

Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates) (*m*); and also the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any person interested in through traffic, of such traffic at through rates: Provided that no application shall be made to the Commissioners by such person until he has made a complaint to the Board of Trade under the provisions of this Act as to complaints to the Board of Trade of unreasonable charges, and the Board of Trade have heard the complaint in the manner herein provided.

(*i*) This recital is repealed by the S. L. R. A., 1908.

(*k*) See *Darlaston L. B.* v. *L. & N. W. Rail. Co.*, [1894] 2 Q. B. 694. In *West Ham Corporation* v. *G. E. Rail. Co.* (1895), 64 L. J. Q. B. 340; 72 L. T. 395, it was held (Sir F. PEEL dissenting) that the provision of water-closets at railway stations for the use of passengers, free of charge, was not a reasonable facility for forwarding traffic which could be ordered by the Railway and Canal Commissioners under s. 2 of the Railway and Canal Traffic Act. But cloak-rooms are reasonable facilities (*Singer Manufacturing Co.* v. *L. & S. W. Rail. Co.*, [1894] 1 Q. B. 833).

(*l*) See *London and India Docks Co.* v. *G. E. Rail. Co. and Midland Rail. Co.*, [1902] 1 K. B. 568.

(*m*) See *Didcot, Newbury and Southampton Rail. Co.* v. *G. W. Rail. Co.*, [1897] 1 Q. B. 33.

Provided as follows :

(1) The company or person requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company, stating both its amount and the route by which the traffic is proposed to be forwarded ; and when a company gives such notice it shall also state the apportionment of the through rate. The proposed through rate may be per truck or per ton :

(2) Each forwarding company shall, within ten days, or such longer period as the Commissioners may from time to time by general order prescribe, after the receipt of such notice, by written notice inform the company or persons requiring the traffic to be forwarded, whether they agree to the rate and route ; and if they object to either, the grounds of the objection :

(3) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration :

(4) If an objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the Commissioners for their decision :

(5) If an objection be made to the granting of the rate or to the route, the Commissioners shall consider whether the granting of a rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly, or fix such other rate as may seem to the Commissioners just and reasonable (*n*) :

(6) Where, upon the application of a person requiring traffic to be forwarded, a through rate is agreed to by the forwarding companies, or is made by order of the Commissioners, the apportionment of such through rate, if not agreed upon between the forwarding companies, shall be determined by the Commissioners (*o*) :

(7) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners, as to its apportionment, shall be retrospective ; in any other case the operation of the rate shall be suspended until the decision is given :

(8) The Commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof :

(*n*) The applicants asked the court to allow a through rate of 1*s.* 2*d.* per ton for slack from certain collieries to their works to be forwarded in quantities of not less than 600 tons per week. The mean distance from the collieries to the works by the route proposed was twenty-four miles, while the route by which the traffic was in fact sent was thirty-four miles, and the rate charged by either route was the same, namely, 1*s.* 11*d.* per ton. It was held that in the absence of evidence to show that the proposed rate would afford any benefit to the public, the application must be refused (*Brunner, Mond & Co., Ltd.* v. *Cheshire Lines Committee and L. & N. W. Rail. Co.* (1909), 25 T. L. R. 618).

(*o*) Where there is an agreed through rate for through traffic over the lines of two railway companies and an agreed apportionment between the two companies which has not been cancelled, the Commissioners have no jurisdiction to make a fresh apportionment of that agreed rate, or of one of the same amount at the instance of one of the companies ; the duty and power of apportionment being incidental only to the fixing of reasonable facilities for the conveyance of through traffic from one point to another (*Manchester Ship Canal Co.* v. *L. & N. W. Rail. Co.*, [1911] 1 K. B. 657).

(9) It shall not be lawful for the Commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels, and to the traffic carried thereby.

When any company, upon written notice being given as aforesaid, refuses or neglects without reason to agree to the proposed through rates, or to the route, or to the apportionment, the Commissioners, if an order is made by them upon an application for through rates, may order the respondent company or companies to pay such costs to the applicants as they think fit.

Powers of Commissioners as to through rates.

26. Subject to the provisions in the last preceding section contained, the Commissioners shall have full power to decide that any proposed through rate is just and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly.

Undue preference in case of unequal tolls, rates, and charges, and unequal services performed.

27.—(1) Whenever it is shown that any railway company charge one trader or class of traders, or the traders in any district, lower tolls, rates, or charges for the same or similar merchandise, or lower tolls, rates, or charges for the same or similar services, than they charge to other traders, or classes of traders, or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or difference in treatment does not amount to an undue preference shall lie on the railway company (*p*).

(2) In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the court having jurisdiction in the matter, or the Commissioners, as the case may be, may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant: Provided that no railway company shall make, nor shall the court, or the Commissioners, sanction any difference in the tolls, rates or charges made for, or any difference in the treatment of, home and foreign merchandise, in respect of the same or similar services (*q*).

(3) The court or the Commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway.

(*p*) The effect of this section is not to limit the court in dealing with questions of alleged undue preference to the consideration whether or not the lower charge is necessary in the interests of the public (*Liverpool Corn Trade Association* v. *L. and N. W. Rail. Co.*, [1891] 1 Q. B. 120. And see *Lever Brothers, Ltd.* v. *Midland Rail. Co.* (1909), 25 T. L. R. 491, 768; *Holwell Iron Co., Ltd.* v. *Midland Rail. Co.*, [1910] 1 K. B. 296).

(*q*) See *Mansion House Association on Railway Traffic* v. *L. and S. W. Rail. Co.* [1895] 1 Q. B. 927.

28. The provisions of section two of the Railway and Canal Traffic Act, 1854, and of section fourteen of the Regulation of Railways Act, 1873, and any enactments amending and extending those enactments, shall apply to traffic by sea in any vessels belonging to or chartered or worked by any railway company, or in which any railway company procures merchandise to be carried, in the same manner and to the like extent as they apply to the land traffic of a railway company.

Extension of enactments as to undue preference to goods carried by sea.

29.—(1) Notwithstanding any provision in any general or special Act (*r*), it shall be lawful for any railway company, for the purpose of fixing the rates to be charged for the carriage of merchandise to and from any place on their railway, to group together any number of places in the same district, situated at various distances from any point of destination or departure of merchandise, and to charge a uniform rate or uniform rates of carriage for merchandise to and from all places comprised in the group from and to any point of destination or departure.

Group rates to be chargeable by railway companies.

(2) Provided that the distances shall not be unreasonable, and that the group rates charged and the places grouped together shall not be such as to create an undue preference (*s*).

(3) Where any group rate exists or is proposed, and in any case where there is a doubt whether any rates charged or proposed to be charged by a railway company may not be a contravention of section two of the Railway and Canal Traffic Act, 1854, and any Acts amending the same, the railway company may, upon giving notice in the prescribed manner, apply to the Commissioners, and the Commissioners may, after hearing the parties interested and any of the authorities mentioned in section seven of this Act, determine whether such group rate or any rate charged or proposed to be charged as aforesaid does or does not create an undue preference. Any persons aggrieved, and any of the authorities mentioned in section seven of this Act (*t*), may, at any time after the making of any order under this section, apply to the Commissioners to vary or rescind the order, and the Commissioners, after hearing all parties who are interested, may make an order accordingly.

30. Any port or harbour authority or dock company which shall have reason to believe that any railway company is by its rates or otherwise placing their port, harbour, or dock, at an undue disadvantage as compared with any other port, harbour, or dock to or from which traffic is or may be carried by means of the lines of the said railway company, either alone or in conjunction with those of other railway companies, may make complaint thereof to the commissioners, who shall have the like jurisdiction to hear and determine the subject-matter of such complaint as they have to hear and determine a complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.

Power to dock companies and harbour boards to complain of undue preference.

31.—(1) Whenever any person receiving or sending or desiring to send goods by any railway is of opinion that the railway company is charging him an unfair or an unreasonable rate of charge, or is in any other respect treating him in an oppressive or unreasonable manner, such person may complain to the Board of Trade.

Complaints to Board of Trade of unreasonable charges by railway companies.

(*r*) See *Davis* v. *Taff Vale Rail. Co.* (1895), 64 L. J. Q. B. 488; 72 L. T. 632.

(*s*) See *Spillers and Bakers* v. *Taff Vale Rail. Co.* (1904), 90 L. T. 713; 20 T. L. R. 101; *Millom and Askham Hematite Iron Co.* v. *Furness Rail. Co.* (1907), 12 Ry. & Can. Traff. Cas. 1; *Abram Coal Co.* v. *G. C. Rail. Co.* (1905), 21 T. L. R. 264.

(*t*) Sanitary authorities, urban and rural, are mentioned in s. 7. See the section, *ante*, p. 1814.

(2) The Board of Trade, if they think that there is reasonable ground for the complaint, may thereupon call upon the railway company for an explanation, and endeavour to settle amicably the differences between the complainant and the railway company.

(3) For the purpose aforesaid, the Board of Trade may appoint either one of their own officers or any other competent person to communicate with the complainant and the railway company, and to receive and consider such explanations and communications as may be made in reference to the complaint; and the Board of Trade may pay to such last-mentioned person such remuneration as they may think fit, and as may be approved by the Treasury.

(4) The Board of Trade shall from time to time submit to Parliament reports of the complaints made to them under the provisions of this section, and the results of the proceedings taken in relation to such complaints, together with such observations thereon as the Board of Trade shall think fit.

(5) A complaint under this section may be made to the Board of Trade by any of the authorities mentioned in section seven of the Act (*u*); in any case in which, in the opinion of any of such authorities, they or any traders or persons in their district are being charged unfair or unreasonable rates by a railway company; and all the provisions of this section shall apply to a complaint so made as if the same had been made by a person entitled to make a complaint under this section.

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PART III.

CANALS.

Part II. to extend to canal companies.

36. All the provisions of Part II. of this Act relating to any railway company shall, so far as applicable, apply to every canal company, and to every railway and canal company; and in Part II. of this Act, unless the context otherwise requires, the expression "railway company" shall include a canal company and a railway and canal company, and the expression "railway" shall include a canal, and the expression "rate" shall include tolls and dues of every description chargeable for the use of any canal or by any canal company.

Application of 36 & 37 Vict. c. 48, to canals.

37.—(1) Section fifteen of the Regulation of Railways Act, 1873, shall apply to the terminal charges of a canal company.

(2) The Railway and Canal Traffic Act, 1854, as amended by the Regulation of Railways Act, 1873, shall extend to any person whose consent is required to any variation of the rates, tolls, or dues charged for the use of any canal, or by any canal company, in like manner as if such person were a canal company, and the expressions "canal company" and "railway and canal company" in the said Acts and this Act shall be construed accordingly to include such person.

(3) The provisions of the Railway and Canal Traffic Act, 1854, and the Regulation of Railways Act, 1873, with respect to rates, shall apply to tolls and dues of every description chargeable for the use of any canal or by any canal company. And nothing in any agreement, whether made before or after the passing of this Act, and whether confirmed by Act of Parliament or not, and nothing in this Act shall prevent the Commissioners from making

(*u*) See note (*t*), *ante*, p. 1823.

or enforcing any order for a through rate or toll which may in their opinion be required in the interest of the public.

(4) Any company allowing traffic to pass from a canal on to any other canal or any railway, or from a railway on to a canal, shall be deemed to be a forwarding company, and the allowing of traffic so to pass shall be deemed to be the forwarding of traffic within the meaning of the above-mentioned Acts.

(5) The provisions of the Railway and Canal Traffic Act, 1854, and of the Regulation of Railways Act, 1873, and of this Act, with respect to through rates, shall extend to any canals which, in connection with any river or other waterway, form part of a continuous line of water communication, notwithstanding that tolls may not be leviable by authority of Parliament upon such river or other waterway.

Powers of Commissioners over canal tolls, rates, and charges where a railway company or its officers own or control the traffic of a canal.

38. Where a railway company, or the directors or officers of a railway company, or any of them or any persons on their behalf, have the control over, or the right to interfere in or concerning the traffic conveyed, or the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on a canal, or any part of a canal, and it is proved to the satisfaction of the Commissioners that the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on the canal are such as are calculated to divert the traffic from the canal to the railway, to the detriment of the canal or person sending traffic over the canal or other canals adjacent to it—

(1) The Commissioners may, on the application of any person interested in the traffic of the canal, make an order requiring the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal, to be altered and adjusted in such a manner that the same shall be reasonable as compared with the rates and charges for the conveyance of merchandise on the railway:

(2) If within such time as may be prescribed by the order of the Commissioners, the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal are not altered and adjusted as required by such order, the Commissioners may themselves by an order make such alterations in and adjustment of the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal as they shall think just and reasonable, and the tolls, rates, and charges as altered and adjusted by the order of the Commissioners shall be binding on the company or persons owning or having the control over the traffic of, or the tolls, rates, and charges levied on the traffic of, or for the conveyance of merchandise on the canal:

(3) No application shall be made to the Commissioners under this section until the Board of Trade have certified that the applicant is a fit person to make the application, and that the application is a proper one to be submitted for the adjudication of the Commissioners; and no order shall be made by the Commissioners under this section unless notice of the application has been served upon such company and persons, and in such manner as the Board of Trade may direct:

(4) The Commissioners may at any time, upon the application of any company or person affected by any order made under this section, and after notice to and hearing such companies and persons as the Commissioners may by any general rules or special order prescribe, rescind or vary any order made under this section.

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Byelaws of canal companies.

40.—(1) Every canal company shall, before such date as the Board of Trade may prescribe, forward to the Board of Trade true copies, certified in such manner as the Board of Trade direct, of any byelaws or regulations of such company which are in force at the commencement of this Act; and the byelaws of any canal company, copies of which are not forwarded to the Board of Trade as provided by this section, shall from and after the said date cease to have any operation, *save in so far as any penalty may have been already incurred under the same* (*v*).

(2) A byelaw or regulation of any canal company hereafter to be made under any power which has *before or at the time of the passing of this Act* (*v*) been, or which may hereafter be, conferred on any canal company, shall not have any force or effect until two months after a true copy of such byelaw or regulation, certified in such manner as the Board of Trade direct, has been forwarded to the Board of Trade, unless the Board of Trade before the expiration of such period have signified their approbation thereof.

(3) The Board of Trade may, at any time after any existing or future byelaws or regulations of a canal company have been forwarded to them, notify to the company their disallowance thereof, or of any of them, and in case such byelaws or regulations are in force at the time of the disallowance, the time at which the said byelaws or regulations shall cease to be in force. A byelaw or regulation disallowed by the Board of Trade shall not after such disallowance have any force or effect whatever, save (as regards any byelaw or regulation which may be in force at the time of the disallowance thereof) in so far as any penalty may have been then already incurred under the same.

(4) The Board of Trade may from time to time make, rescind, and vary such regulations as they think fit with respect to the publication by canal companies of their byelaws and regulations, and with respect to the publication by canal companies of their intention to apply to the Board of Trade for the allowance of any intended byelaws and regulations. Any regulations so made which are for the time being in force, shall have effect as if they had been enacted in this Act.

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Canal companies may agree for through tolls, etc

43.—(1) Any canal company may make and enter into contracts and arrangements with any other canal company or canal companies for the passage over and along their respective canals, or any of them, of boats, barges, vessels, and other through traffic, and, for the use, by such traffic, of the wharves, landing places, and other works of any such canal, upon payment of such through tolls, rates, and charges, and subject to such conditions and restrictions as may be agreed upon between such companies; and for the collection and recovery by any one of the companies on behalf of themselves and the other companies interested of the tolls, rates, and charges payable in respect of such through traffic; and for the division and apportionment of the tolls, rates, and charges; and any such contract may contain provisions for the erection and maintenance of or otherwise for providing warehouses, offices, and other buildings and conveniences, and any other provisions for the purpose of carrying into effect any such arrangement, and any company may apply their funds or moneys for the same purpose.

(2) Notwithstanding any enactments providing for the charge of equal tolls, rates, and charges, such through tolls, rates, and charges as above mentioned may respectively be computed at a lower toll or rate per mile than the tolls, rates, or charges charged for the passage over and along the same canals of like traffic, not being through traffic, without necessitating or occasioning any reduction of the last-mentioned tolls, rates, or charges.

(*v*) Italicised words repealed by S. L. R. A., 1908.

(3) Any like contracts and arrangements existing at the passing of this Act shall be, and from the respective dates of the making thereof shall be deemed to have been, as valid as if the same had been made after the commencement of this Act.

45.—(1) Where, on the application of a canal company, it appears to the Board of Trade that any canal or part of a canal belonging to the applicants (hereinafter referred to as an unnecessary canal) is at the time of making the application unnecessary for the purposes of public navigation, or where, on the application of any local authority (*x*), or of three or more owners of lands adjoining or near to any canal or part of a canal, it appears to the Board of Trade that that canal or part of a canal (hereinafter referred to as a derelict canal) has for at least three years previously to the making of the application been disused for navigation, or, by reason of the default of the proprietors thereof, has become unfit for navigation, or that the lands adjoining or near thereto have suffered injury by water that has escaped from the derelict canal, and that the proprietors of the derelict canal decline or are unable to effect the repairs necessary to prevent further injury, the Board of Trade may by warrant signed by their secretary authorise the abandonment by the existing proprietors of such unnecessary canal or such derelict canal, and after the granting of the warrant, and the due publication as required by the Board of Trade of a notice of the granting thereof, the Board of Trade may make an order releasing the canal company or other the proprietors of the unnecessary or derelict canal from all liability to maintain the same canal, and from all statutory and other obligations in respect thereof, or of or consequent on the abandonment thereof. Abandonment of canal.

(2) In the case of an unnecessary canal no warrant of abandonment shall be granted unless the Board of Trade are satisfied—

(a) That it is unnecessary for the purposes of public navigation;

(b) That the application has been expressly authorised by a resolution of a majority of the shareholders of the canal company owning the canal present and voting at an extraordinary or special general meeting of that company;

(c) That such public and other notices of the application have been given as the Board of Trade may require;

(d) That compensation (the amount thereof to be determined in case of difference as the Board of Trade may prescribe) has been made to all persons entitled to compensation by reason of the proposed abandonment of the canal.

(3) In the case of a derelict canal the warrant may be granted on the condition that the canal or any part thereof, with all or any of the powers relating thereto, be transferred to any person, body of persons, or local authority, and where any such condition is imposed the Board of Trade may, if they think fit, frame and embody in a Provisional Order a scheme for the management of the canal or any part thereof.

(4) The Provisional Order may provide for the constitution of a body to manage the canal or any part thereof, for the transfer to that body or any local authority of the canal or any part thereof, and of all or any of the powers relating thereto, for the limitation or discharge of any liabilities affecting the canal or the owners thereof for the time being, and for any other matters which may appear to the Board of Trade to be necessary or proper for carrying this section into effect.

(5) The Board of Trade may submit to Parliament for confirmation any Provisional Order made by it in pursuance of this section, but any such

(*x*) See sub-s. (7), *infra*.

Order shall be of no force unless and until it is confirmed by Act of Parliament.

(6) If while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to the Order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(7) In this section the expression "local authority" means any one of the local authorities mentioned in section seven of this Act (*y*).

(8) For the purpose of giving effect to the provisions of this section, the Board of Trade may require the applicants to furnish any evidence in their possession or under their control relative to the application, and may at the expense of the applicants appoint and send an officer to inspect the canal referred to in the application, and to obtain information and evidence in the neighbourhood thereof relative to the proposed abandonment, and may from time to time make regulations as to the mode of making applications, and the nature and mode of publication of notices, and generally as to the conduct of proceedings.

Definition of "canal company."

46. In this Part of this Act the expression "canal company" shall include a "railway and canal company," so far as relating to any canal of any such last-mentioned company.

PART IV.

MISCELLANEOUS.

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Evidence on rating appeals.

48. On any rating appeal (*z*), and before any court, where it may be material to show the receipts or profits of a railway company or canal company, or railway and canal company, it shall be lawful for the company to prove the same by written statements or returns verified by the affidavit or statutory declaration of the manager or other responsible officer, and any such statements or returns shall be primâ facie evidence of the facts therein stated with respect to such receipts or profits: Provided that the person by whom any such affidavit or statutory declaration is made shall in every case, if required, attend to be cross-examined thereon.

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Parties may appear in person or by counsel, etc.

50. In any proceedings under this Act any party may appear before the Commissioners either by himself in person or by counsel or solicitor.

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Saving of powers conferred on Commissioners and Board of Trade.

52. The powers and jurisdiction conferred by this Act on the Commissioners or Board of Trade shall be in addition to and not in substitution for any powers and jurisdiction vested in the Commissioners or Board of Trade by any statute.

Proceedings of Board of Trade.

53.—(1) All documents purporting to be rules, orders, or certificates made or issued by the Board of Trade, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence, and deemed to be such orders, rules, or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of, the Board of Trade, shall be conclusive evidence of the fact so certified.

(*y*) See the section, *ante*, p. 1814. The expression "local authority" includes an urban or rural sanitary authority.

(*z*) See the definition of this expression in s. 55, *infra*.

54.—(1) Where any local authority having power under this Act to make or oppose any complaint to the Commissioners, or the Board of Trade, or to enter into any agreement to pay the whole or a portion of the expenses of complying with an order of the Commissioners or the Board of Trade, or to make any application for the abandonment or acquisition of a canal under this Act, incur any expenses in or incidental to such complaint, opposition, agreement, or application, such expenses may be defrayed out of the rates or funds out of which the expenses incurred by such authority in the execution of their ordinary duties are defrayed, and if such authority is a rural sanitary authority in England, shall be defrayed as general expenses, unless the Local Government Board direct that they shall be defrayed as special expenses (*a*). Expenses of local authorities.

(2) A local authority may enter into any contract involving the payment by themselves and their successors of any expenses authorised by this section to be defrayed.

(3) Where any such local authority have no power to borrow money for the purpose of defraying any expenses authorised by this section, such authority, if other than a surveyor of highways, may, with the consent of the Board of Trade in the case of any harbour board or conservancy authority, and with the consent of the Local Government Board in the case of any other authority, borrow money in manner provided by the Local Loans Act, 1875 (*b*), on the security of the rates or funds out of which the expenses are authorised to be defrayed, and the prescribed period for the loan shall be such period as the board giving such consent may approve. 38 & 39 Vict. c. 83.

(4) On the request of any board whose consent is required for such loan, the Board of Trade or Commissioners shall certify such particulars respecting the amount of the said expenses and the propriety of incurring the same and of borrowing for the payment thereof as may be requested by such board (*c*).

. . . . .

55. In this Act, unless the context otherwise requires,— Definitions.

Terms defined by the Regulation of Railways Act, 1873, have the meanings thereby assigned to them:

The term "conservancy authority" means any persons who are otherwise than for private profit intrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal or inland water or navigation:

The term "harbour board" means any persons who are otherwise than for private profit intrusted with the duty or invested with the power of constructing, improving, managing, regulating, and maintaining a harbour, whether natural or artificial, or any dock:

The term "undue preference" includes an undue preference, or an undue or unreasonable prejudice or disadvantage, in anv respect, in favour of or against any person or particular class of persons or any particular description of traffic:

The term "terminal charges" includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes, and other similar matters, and of any services rendered thereat:

The term "merchandise" includes goods, cattle, live-stock, and animals of all descriptions:

(*a*) The expenses in the case of an urban authority will, in general, be paid out of the general district fund. See s. 207 of the P. H. A., 1875, *ante*, p. 468. As to special expenses, see s. 229 of the same Act, *ante*, p. 509.

(*b*) The text of this Act is set out, *ante*, p. 1594.

(*c*) The remainder of this section relates only to Ireland.

The term "trader" includes any person sending, receiving, or desiring to send merchandise by railway or canal:

The term "home" in relation to merchandise, includes the United Kingdom, the Channel Islands, and the Isle of Man:

The term "rating appeal" means an appeal against any valuation list or against any poor rate or any other local rate (*d*).

. . . . .

The term "superior court" means, as regards England, the High Court . . .

The term "superior court of appeal" means, as regards England, her Majesty's Court of Appeal . . .

* * * * *

THE MORTMAIN AND CHARITABLE USES ACT, 1888.

(51 & 52 VICT. c. 42.) (*e*)

An Act to consolidate and amend the Law relating to Mortmain and to the disposition of Land for Charitable Uses. [13th August 1888.]

PART I.

MORTMAIN.

Forfeiture on unlawful assurance or acquisition in mortmain.

1.—(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain, otherwise than under the authority of a licence from her Majesty the Queen, or of a statute for the time being in force (*f*), and if any land is so assured otherwise than as aforesaid the land shall be forfeited to her Majesty from the date of the assurance, and her Majesty may enter on and hold the land accordingly:

(2) Provided as follows:

(i.) If the land is held directly of a mesne lord under her Majesty, that mesne lord may enter on and hold the land at any time within twelve months from the date of the assurance:

(ii.) If the land is held of more than one mesne lord in gradation under her Majesty, the superior of those mesne lords may enter on and hold the land at any time within six months after the time at which the right of the inferior lord to enter on the land expires:

(*d*) The expression "local rate" would include a general district rate. Parts of the remainder of this section relating to Scotland and Ireland only are here omitted.

(*e*) The P. H. A., 1875, s. 7, *ante*, p. 39, provided that local boards and improvement commissioners may hold lands without licence in mortmain for the purposes of that Act. And by s.85 (5) of the L. G. A., 1894, *ante*, p. 1065, the change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers. By s. 24 (7) of the L. G. A., 1894, *ante*, p. 1003, every district council for a rural district may hold land for the purposes of their powers and duties without licence in mortmain. And by s. 7 of the Commons Act, 1899, *post*, p. 1951, any district council may acquire and hold property in a common regulated by scheme under that Act, without such licence. As to the powers of the corporation of a borough, see the Municipal Corporations Act, 1882, s. 107, and *Truro Corporation* v. *Rowe*, [1902] 2 K. B. 708; 66 J. P. 821. The powers of a sanitary authority to hold lands for purposes other than those mentioned in these statutes depend upon this statute as amended by the Working Classes Dwellings Act, 1890, the Mortmain and Charitable Uses Act, 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892, *post*, p. 1866.

(*f*) See note (*e*), *supra*.

(iii.) If a mesne lord is at the time when his right of entry accrues under this Act a lunatic or otherwise under incapacity, his right of entry may be exercised by his guardian or the committee of his estate, or by such person as her Majesty's High Court of Justice may appoint in that behalf:

(iv.) If the right of entry under this Act is exercised by or on behalf of a mesne lord, the land shall be forfeited to that lord from the date of the assurance instead of to her Majesty.

2. It shall be lawful for her Majesty the Queen, if and when and in such form as she thinks fit, to grant to any person or corporation a licence to assure in mortmain land in perpetuity or otherwise, and to grant to any corporation a licence to acquire land in mortmain and to hold the land in perpetuity or otherwise. Power to her Majesty to grant licences in mortmain.

3. No entry or holding by or forfeiture to her Majesty under this Part of this Act, shall merge or extinguish, or otherwise affect, any rent or service which may be due in respect of any land to her Majesty or any other lord thereof. Saving for rents and services.

PART II.

Charitable Uses.

4.—(1) Subject to the savings and exceptions contained in this Act, every assurance of land, to or for the benefit of any charitable uses and every assurance of personal estate to be laid out in the purchase of land, to or for the benefit of any charitable uses, shall be made in accordance with the requirements of this Act, and unless so made shall be void (*g*). Conditions under which assurances may be made to charitable uses.

(2) The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

(3) The assurance must, except as provided by this section, be without any power of revocation, reservation, condition, or provision for the benefit of the assuror or of any person claiming under him

(4) Provided that the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assuror as to the assuror himself; namely,

(i.) The grant or reservation of a peppercorn or other nominal rent;

(ii.) The grant or reservation of mines or minerals;

(iii.) The grant or reservation of any easement;

(iv.) Covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;

(v.) A right of entry on non-payment of any such rent or on breach of any such covenant or provision;

(vi.) Any stipulations of the like nature for the benefit of the assuror or of any person claiming under him.

(*g*) A domiciled Victorian, who died in June, 1891, bequeathed £10,000 to the mayor and corporation of the city of Canterbury, in England, for the purpose of their buying a suitable piece of land and erecting thereon a free library. Under the law of Victoria the corporation were able lawfully to expend the money as directed by the testator :—*Held*, that the English Mortmain Act, 1888, only applied in so far as that the assurance of the land must be in accordance with the provisions of the Act, and that the bequest was valid (*Canterbury Corporation* v. *Wyburn*, [1895] A. C. 89).

(5) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rent-charge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for non-payment thereof.

(6) If the assurance is of land, not being land of copyhold or customary tenure, or is of personal estate, not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses.

(7) If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assuror, including in those twelve months the days of the making of the assurance and of the death.

(8) If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assuror, including in those six months the days of the transfer and of the death.

(9) If the assurance is of land, or of personal estate other than stock in the public funds, it must, within six months after the execution thereof, be enrolled in the central office of the Supreme Court *of Judicature*, unless in the case of an assurance of land to or for the benefit of charitable uses those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land (*h*).

Power to remedy omission to enrol within requisite time.

5.—(1) Where an instrument, the enrolment whereof is required under this part of this Act for the validation of an assurance, is not duly enrolled within the requisite time, her Majesty's High Court of Justice, or the officer having control over the enrolment of deeds in the central office, may, on application in such manner and on payment of such fee as may be prescribed by rules of the Supreme Court, and on being satisfied that the omission to enrol the instrument in proper time has arisen from ignorance or inadvertence, or through the destruction or loss of the instrument by time or accident, and that the assurance was of a nature to be validated under this section, order or cause the instrument to be enrolled.

(2) Thereupon, if the assurance to be validated was made in good faith and for full and valuable consideration, and was made to take effect in possession immediately from the making thereof without any power of revocation, reservation, condition, or provision, except such as is authorised by this Act, and if at the time of the application possession or enjoyment was held under the assurance, then enrolment in pursuance of this section shall have the same effect as if it had been made within the requisite time.

(3) Provided that if at the time of the application any proceeding for setting aside the assurance, or for asserting any right founded on the invalidity of the assurance, is pending, or any decree or judgment founded on such invalidity has been then obtained, the enrolment under this section shall not give any validity to the assurance.

(4) Where the instrument omitted to be enrolled in proper time has been destroyed or lost by time or accident and the trusts thereof sufficiently appear by a copy or abstract thereof or some subsequent instrument, such copy, abstract, or subsequent instrument may be enrolled under this section in like manner and with the like effect as if it were the instrument so destroyed or lost.

(*h*) See R. S. C., Order LXI., r. 9; Seton on Decrees, 7th ed., pp. 1296, 1297. Form of order to enrol, after the proper time under s. 5, Seton, 7th ed., p. 1293, No. 9.

(5) An application under this section may be made by any trustee, governor, director, or manager of, or other person entitled to act in the management of or otherwise interested in, any charity or charitable trust intended to be benefited by the uses declared by the instrument to be enrolled.

PART III.

Exemptions.

Assurances for a public park, elementary school, or public museum.

6.—(1) Parts One and Two of this Act shall not apply (*i*) to an assurance by deed of land of any quantity or to an assurance by will of land of the quantity hereinafter mentioned for the purposes only of a public park, a schoolhouse for an elementary school (*k*), a public museum, or an assurance by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only.

(2) Provided that a will containing such an assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assuror, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in case of a deed the execution of the deed.

(3) The quantity of land which may be assured by will under this section shall be any quantity not exceeding twenty acres for any one public park, and not exceeding two acres for any one public museum, and not exceeding one acre for any one schoolhouse.

(4) In this section:

(i.) "Public park" includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public;

(ii.) "Elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week;

(iii.) "Schoolhouse" includes the teacher's dwelling-house, the playground (if any), and the offices and premises belonging to or required for a school;

(*i*) It is provided by the Working Classes Dwellings Act, 1890, *post*, p. 1852, that Parts I. and II. of this Act shall not apply to gifts of land for dwellings for the working classes.

It is further provided by the Mortmain and Charitable Uses Amendment Act, 1892, *post*, p. 1866, that the above section, except as therein mentioned, shall apply to any assurance by deed of land to any local authority, for any purposes for which such authority is empowered by any Act of Parliament to acquire land. See s. 164 of the P. H. A., 1875, *ante*, p. 368. By s. 8 of the Housing, Town Planning, etc. Act, 1909, *ante*, p. 1159, a local authority may accept donations of land or money or other property for any purpose of the Housing Acts, and assurances with respect thereto need not be enrolled under this Act.

As to the enforcement of secret trusts for the benefit of the public, see *In re Pitt Rivers, Scott* v. *Pitt Rivers*, [1902] 1 Ch. 403; 66 J. P. 275.

(*k*) By s. 23 (5) of the Education Act, 1902, it is enacted that the Mortmain and Charitable Uses Act, 1888, and as much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to any assurance within the meaning of the said Act of 1888 of land for the purpose of a schoolhouse of an elementary school.

(iv.) "Public museum" includes buildings used or to be used for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models, or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories, and other offices and premises used or to be used in connection therewith.

Assurances for certain universities, colleges, and societies.

7. Part Two of this Act shall not apply to the following assurances:

(i.) An assurance of land, or personal estate to be laid out in the purchase of land, to or in trust for any of the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges or houses of learning within any of those universities, or to or in trust for any of the colleges of Eton, Winchester, and Westminster, for the better support and maintenance of the scholars only upon the foundations of those last-mentioned colleges, or to or in trust for the warden, council, and scholars of Keble College:

(ii.) An assurance, otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes or for the promotion of education, art, literature, science, or other like purposes of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration:

Provided that the trustees of the instrument containing any assurance to which this section applies or declaring the trusts thereof, may, if they think fit, at any time cause the instrument to be enrolled in the central office of the Supreme Court *of Judicature*.

Substitution of provisions of Act for corresponding repealed enactments.

8. Where by any statute now in force any provision of the enactments hereby repealed is excluded either wholly or partially from application, or is applied with modification, in every such case the corresponding provision of this Act shall be excluded or applied in like extent and manner.

PART IV.

SUPPLEMENTAL.

Adaptation of law to system of land registration. 38 & 39 Vict. c. 87.

9. Any assurance of land which is by this Act required to be made by deed may be made by a registered disposition under the provisions of the Land Transfer Act, 1875, or of any Act amending the same, and any assurance so made shall be exempt from the provisions of this Act as to execution in the presence of witnesses, and as to enrolment in the central office of the Supreme Court.

Definitions.

10. In this Act, unless the context otherwise requires,—

(i.) "Assurance" includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument; and "assure" and "assuror" have meanings corresponding with assurance.

(ii.) " Will " includes codicil (*l*).

. . . . .

(iv.) " Full and valuable consideration " includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent-charge, or other annual payment in perpetuity, or for any term of years or other period, with or without a right of re-entry for non-payment thereof, or partly paid and partly reserved as aforesaid.

11. This Act shall not extend to Scotland or Ireland. Extent of Act.

12. Nothing in this Act shall affect the operation or validity of any charter, licence, or custom in force at the passing of this Act enabling land to be assured or held in mortmain. Savings for existing customs, etc.

13. (*m*)—(1) *The Acts specified in the Schedule to this Act are hereby repealed from and after the passing of this Act, to the extent specified in the third column of that Schedule :* Repeal.

Provided that this repeal shall not affect—

(a) Any enactment not hereby repealed referring to any enactment hereby repealed, except that in lieu of that reference the unrepealed enactment shall be construed as if it referred to the corresponding provisions of this Act ; or

(b) *The past operation of any enactment hereby repealed, or any instrument or thing executed, done, or suffered before the passing of this Act ; or*

(c) *Any right, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed ; or*

(d) *Any action, proceeding, or thing pending or uncompleted at the time of the passing of this Act.*

(2) Whereas by the preamble to the Act of the forty-third year of Elizabeth, chapter four (being one of the enactments hereby repealed), it is recited as follows :

" Whereas landes tenementes rentes annuities p'fittes hereditamentes, goodes chattels money and stockes of money, have bene heretofore given limitted appointed and assigned, as well by the Queenes moste excellent Majestie and her moste noble progenitors, as by sondrie other well disposed p'sons, some for releife of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in univ'sities, some for repaire of bridges portes havens causwaies churches sea bankes and highewaies, some for educacon and p'fermente of orphans, some for or towardes reliefe stocke or maintenance for howses of correcon, some for mariages of poore maides, some for supportacon ayde and helpe of younge tradesmen, handiecraftesmen and p'sons decayed, and others for releife or redemption of prisoners or captives, and for aide or ease of any poore inhabitantes conc'ninge paymente of fifteenes, settinge out of souldiers and other taxes ; whiche landes tenements rents annuities p'fitts hereditaments goodes chattels money and stockes of money nev'theles have not byn imployed accordinge to the charitable intente of the givers and founders thereof, by reason of fraudes breaches of truste and negligence in those that shoulde pay delyver and imploy the same : " and whereas in divers enactments and documents reference

(*l*) Sub-s. (iii) was repealed by the Mortmain and Charitable Uses Act, 1891, *post*, p. 1864. It contained the definition of " land." See now s. 3 of that Act, *post*, p. 1865.

(*m*) The italicised words in s. 13 and the Schedule were repealed by the S. L. R. A., 1908.

is made to charities within the meaning, purview, and interpretation of the said Act:

Be it therefore enacted that references to such charities shall be construed as references to charities within the meaning, purview, and interpretation of the said preamble.

Short title. **14.** This Act may be cited as the Mortmain and Charitable Uses Act, 1888.

THE PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888.

(51 & 52 VICT. c. 62.) (*n*)

An Act to amend the Law with respect to Preferential Payments in Bankruptcy, and in the winding-up of Companies. [24th December 1888.]

Priority of debts. **1.**—(1) In the distribution of the property of a bankrupt, . . . there shall be paid in priority to all other debts—

(a) All parochial or other local rates (*o*) due from the bankrupt . . . at the date of the receiving order . . . and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the bankrupt . . . up to the fifth day of April next before the date of the receiving order, . . . and not exceeding in the whole one year's assessment (*p*);

(b) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt . . . during four months before the date of the receiving order . . . not exceeding fifty pounds (*q*); and

(c) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt . . . during two months before the date of the receiving order . . .: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year

(*n*) The Companies (Consolidation) Act, 1908, repealed the first three sections of this Act so far as they related to companies, and also an amending Act, 60 & 61 Vict. c. 19, which only related to companies. See now ss. 107 and 209 of the Act of 1908, *post*, p. 2110. For the provisions in force before this Act, see the Bankruptcy Act, 1883, s. 40. As to when a bankruptcy commences, see *In re Bumpus, Ex parte White*, [1908] 2 K. B. 330.

(*o*) This expression would include general district rates and all other sanitary rates made by an urban or rural authority. It does not include harbour dues (*In re H. & Co.* (1890), 27 L. R. Ir. 271). It was held in *In re Mannesman Tube Co.*, [1901] 2 Ch. 93; 65 J. P. 377 (apparently without argument), to include meter charges for water: *sed quære*,—see note (*l*), p. 1425, *ante*.

(*p*) A. was assessed to a local rate as the occupier of certain premises, and his rate was payable in advance for half a year on October 8th, 1886. On January 17th, 1887, A. became bankrupt, and at that time the rate remained unpaid. On February 1st, 1887, the official receiver as trustee sold A.'s interest in the premises to B., who allowed A. to remain in occupation as his tenant. The rate was claimed from the trustee for the whole half-year; the trustee offered to pay the proportion of it up to February 1st, being for the period during which he continued occupier:—*Held*, that the bankrupt had not ceased to be occupier, and that the trustee was liable for the rate for the whole half-year (*Ex parte Ystradyfodwg L. B., Re Thomas* (1888), 57 L. J. Q. B. 39; 58 L. T. 113). See also *In re Smith, Ex parte Mason, ante*, p. 1540.

(*q*) See *Re Smith, Ex parte Fox* (1886), 17 Q. B. D. 4; *Re Klein, Ex parte Goodwin* (1906), W. N. 148; 22 T. L. R. 664; *Cairney* v. *Back*, [1906] 2 K. B. 746; *Re Newspaper Proprietary Syndicate, Ltd.*, [1900] 2 Ch. 349; *Winter German Opera, Ltd.* (1907), 23 T. L. R. 662.

of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order . . .

(2) The foregoing (r) debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is . . . insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor . . . is . . . sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt . . . within three months next before the date of the receiving order, . . . the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

Provided, that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made (s).

(5) This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.

(6) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order (t).

2.—(1) Nothing in this Act shall alter the effect of section five of the Act twenty-eight and twenty-nine Victoria, chapter eighty-six, " To amend the law of partnership," or shall prejudice the provisions of the Friendly Societies Act, 1875, or shall affect the priority given to the payment of funeral and testamentary expenses by section one hundred and twenty-five of the Bankruptcy Act, 1883 (u). Savings.

(r) At the present date two other classes of claims have equal priority, viz., certain claims for compensation by injured workmen (see the Workmen's Compensation Act, 1906), and certain contributions due from an employer under the National Insurance Act, 1911 (see s. 110 thereof, *post*, p. 2147).

(s) This sub-section was an addition to the previous law. The landlord who has distrained within the three months herein mentioned must, out of the proceeds of his distress, pay the rates and other preferential debts mentioned in the section, but he in turn will have the right to be repaid before other creditors.

(t) The priority as to rates, etc. applies in the case of a deceased insolvent whose estate is being administered in the Chancery Division (*In re Heywood, Parkington* v. *Heywood*, [1897] 2 Ch. 593).

(u) The 28 & 29 Vict. c. 86 (" Bovill's " Act) was repealed by the Partnership Act, 1890 ; but s. 5 was in effect reproduced by ss. 2 (3) (d), (e), and 3 thereof. By s. 2, in determining whether a partnership does or does not exist, regard shall be had to the following rules : (3) The receipt by a person of a share of the profits of a business is primâ facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business ; and in particular—(d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto ; (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such. And by s. 3 of the same Act, in the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrange-

(2) . . .

Application of Act.

3. This Act shall apply only in the case of receiving orders and orders for the administration of the estates of deceased debtors according to the law of bankruptcy made . . . after the commencement of this Act.

Extent of Act.

4. This Act shall not apply to Ireland.

5. [*Commencement of Act.*] (*x*)

6. [*Repeal.*] (*x*)

Short title.

7. This Act may be cited as the Preferential Payments in Bankruptcy Act, 1888.

THE SALE OF HORSEFLESH, ETC., REGULATION ACT, 1889.

(52 & 53 VICT. c. 11.)

An Act to regulate the Sale of Horseflesh for Human Food.

[24th June 1889.]

Whereas it is desirable to make regulations with respect to the sale of horseflesh for human food:

. . . . .

Signs on horseflesh shops.

1. No person shall sell, offer, expose, or keep for sale any horseflesh for human food (*y*), elsewhere than in a shop, stall, or place over or upon which

ment to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan; and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. But this section does not deprive the lender of his right to retain any security he may have taken for his money, nor to foreclose his security (*Ex parte Shiel* (1877), 4 Ch. D. 789; *Badeley* v. *Consolidated Bank* (1887), 34 Ch. D. 536).

The Friendly Societies Act, 1875, is now repealed by the Friendly Societies Act, 1896, but the provisions of s. 15 (7) are reproduced by s. 35 of that Act as follows, viz., (1) In the following cases, namely—(a) upon the death or bankruptcy of any officer of a registered society or branch having in his possession by virtue of his office any money or property belonging to the society or branch; or (b) if any execution, attachment, or other process is issued, or action or diligence raised against any such officer or against his property, his heirs, executors, or administrators, or trustee in bankruptcy, or the sheriff or other person executing the process, or the party using the action or diligence respectively shall, upon demand in writing of the trustees of the society or branch, or of any two of them, or of any person authorised by the society or branch, or by the committee thereof, to make the demand, pay the money, and deliver over the property to the trustees of the society or branch in preference to any other debt or claim against the estate of the officer. (2) In this section the expression "bankruptcy" shall include liquidation of a debtor's affairs by arrangement in England, *cessio bonorum* of a debtor in Scotland, and a petition for arrangement with creditors in Ireland; and the expression "trustee in bankruptcy" shall include a judicial factor in Scotland, and an assignee in Ireland. Upon the bankruptcy of an officer of a friendly society, the trustees are, under this sub-section, entitled to preferential payment of sums received by him by virtue of his office, notwithstanding that these sums cannot be specifically traced, and are not at the time of the bankruptcy in his actual possession (*In re Miller, Ex parte Official Receiver*, [1893] 1 Q. B. 327; 57 J. P. 469, applied to the case of an ex-officer in *In re Eilbeck*, [1910] 1 K. B. 136).

The Bankruptcy Act, 1883, s. 125 (7), provides as follows: In the administration of the property of the deceased debtor under an order of administration, the Official Receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(*x*), (*y*). For notes (*x*) (*y*) see next page.

there shall be at all times painted, posted, or placed in legible characters of not less than four inches in length, and in a conspicuous position, and so as to be visible throughout the whole time, whether by night or day, during which such horseflesh is being offered or exposed for sale, words indicating that horseflesh is sold there.

2. No person shall supply horseflesh for human food to any purchaser who has asked to be supplied with some meat other than horseflesh, or with some compound article of food which is not ordinarily made of horseflesh. Horseflesh not to be sold as other meat.

3. Any medical officer of health or inspector of nuisances or other officer of a local authority acting on the instructions of such authority or appointed by such authority for the purposes of this Act may at all reasonable times inspect and examine any meat which he has reason to believe to be horseflesh, exposed for sale or deposited for the purpose of sale, or of preparation for sale, and intended for human food, in any place other than such shop, stall, or place as aforesaid, and if such meat appears to him to be horseflesh he may seize and carry away or cause to be seized and carried away the same, in order to have the same dealt with by a justice as hereinafter provided (*z*). Power of medical officer of health to inspect meat, etc.

4. On complaint made on oath by a medical officer of health or inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building, or part of a building other than such shop, stall, or place as aforesaid, in which such officer has reason for believing that there is kept or concealed any horseflesh which is intended for sale, or for preparation for sale for human food, contrary to the provisions of this Act; and to search for, seize, and carry away or cause to be seized and carried away any meat that appears to such officer to be such horseflesh, in order to have the same dealt with by a justice as hereinafter provided (*z*). Power of justice to grant warrant for search.

Any person who shall obstruct any such officer in the performance of his duty under this Act shall be deemed to have committed an offence under this Act (*a*).

5. If it appears to any justice that any meat seized under the foregoing provisions of this Act is such horseflesh as aforesaid, he may make such order with regard to the disposal thereof as he may think desirable (*b*); and the person in whose possession or on whose premises the meat was found shall be deemed to have committed an offence under this Act, unless he proves that such meat was not intended for human food contrary to the provisions of this Act (*c*). Power of justice with reference to disposal of horseflesh.

6. Any person offending against any of the provisions of this Act, for every such offence shall be liable to a penalty not exceeding twenty pounds, to be recovered in a summary manner (*d*); and if any horseflesh is proved to have been exposed for sale to the public in any shop, stall, or eating-house (*e*) other than such shop, stall, or place as in the first section mentioned, Penalty

(*x*) Section 6 and the Schedule (which, together with s. 5, are now repealed by the S. L. R. A., 1908) repealed the Companies Act, 1883 (except as to Ireland), s. 40 (1), (2) of the Bankruptcy Act, 1883, and the Bankruptcy (Agricultural Labourers Wages) Act, 1886.

(*y*) This Act applies only to the sale of horseflesh for human food.

(*z*) See s. 5.

(*a*) For the penalty of this offence, see s. 6.

(*b*) The order is left to the discretion of the justice. He may order the meat to be destroyed, or he may order it to be sold for the food of dogs or the like.

(*c*) It will be for the defendant to prove that the meat was not intended for human food.

(*d*) That is to say, before a court of summary jurisdiction in manner provided by the S. J. Acts. See S. J. A., 1879, s. 51.

(*e*) The reference to an eating-house, and the definition in s. 7, show that the Act is

without anything to show that it was not intended for sale for human food, the onus of proving that it was not so intended shall rest upon the person exposing it for sale.

Definition of "horseflesh."

7. For the purposes of this Act "horseflesh" shall include the flesh of asses and mules, and shall mean horseflesh, cooked or uncooked, alone or accompanied by or mixed with any other substance.

Local authorities for purposes of Act.

8. For the purposes of this Act the local authorities shall be, in the city of London and the liberties thereof, the commissioners of sewers, and in the other parts of the county of London the vestries and district boards acting in the execution of the Metropolis Local Management Acts, and in other parts of England the urban and rural sanitary authorities (*f*). . . .

* * * * *

Short title.

10. This Act may be cited as the Sale of Horseflesh, etc. Regulation Act, 1889.

11. [*Commencement of Act, September* 29, 1889.]

THE TOWN POLICE CLAUSES ACT, 1889.

(52 & 53 VICT. c. 14.)

An Act to amend the provisions relating to Hackney Carriages of the Town Police Clauses Act, 1847. [24th June, 1889.]

10 & 11 Vict. c. 89.

Whereas it is expedient to amend the provisions with respect to hackney carriages of the Town Police Clauses Act, 1847, *in this Act called the principal Act* (*g*) :

Short title. 10 & 11 Vict. c. 89.

1. This Act may be cited as the Town Police Clauses Act, 1889, *and this Act and the Town Police Clauses Act*, 1847, *may be cited together as the Town Police Clauses Acts*, 1847 *and* 1889 (*g*).

Construction of Act.

2.—(1) This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to mean the principal Act as amended by this Act.

38 & 39 Vict. c. 55.

(2) This Act shall be deemed to be incorporated with the Public Health Act, 1875, by section one hundred and seventy-one of that Act (*h*).

Defining "omnibus."

3. The term "omnibus" where used in this Act, shall include—

Every omnibus, char-à-banc, wagonette, brake, stage coach, and other carriage plying or standing for hire by or used to carry passengers at separate fares to, from, or in any part of the prescribed distance (*i*) ;

intended to apply not only to sales of horseflesh as butchers' meat, but to its sale as beef in an eating-house or restaurant.

(*f*) The remainder of this section relates only to Ireland, and s. 9 relates only to Scotland.

(*g*) Italicised words repealed by the S. L. R. A., 1908. The Town Police Clauses Act, 1847, in so far as it is incorporated with the P. H. A., 1875, is set out, *ante*, p. 1451.

(*h*) See this section, *ante*, p. 392.

(*i*) The prescribed distance means within the urban district. See s. 171 of the P. H. A., 1875, *ante*, p. 392. If a rural district council desire to have powers under this Act in combination with those of the Act of 1847, they must apply to the L. G. B. for an order under s. 276 of the P. H. A., 1875, *ante*, p. 609. The council of a rural district near London decided that it was necessary to regulate a line of motor omnibuses which had commenced running in their area, and applied to the L. G. B. for an Order. The Board replied that they had found it necessary to communicate with the Secretary of State in the matter, and that in consequence of his views they were only prepared to confer the desired powers upon the council in respect of so much of their area as lay outside the metropolitan police district.

but shall not include—

Any tramcar or tram carriage duly licensed under the provisions of the Tramways Act, 1870, or of any Provisional Order made thereunder and confirmed by Parliament, or under the provisions of any local Act of Parliament: 33 & 34 Vict. c. 78.

Any carriage starting from and previously hired for the particular passengers thereby carried at any livery stable yard (within the prescribed distance) whereat horses are stabled and carriages let for hire, the said carriage starting from the said stable yard and being bonâ fide the property of the occupier thereof, and not standing or plying for hire (*k*) within the prescribed distance:

Any omnibus belonging to or hired or used by any railway company for conveying passengers and their luggage to or from any railway station of that company, and not standing or plying for hire within the prescribed distance (*l*):

Any omnibus starting from outside the prescribed distance, and bringing passengers within the prescribed distance, and not standing or plying for hire within the prescribed distance (*m*).

Extending certain provisions of principal Act to omnibuses.

4.—(1) The several terms "hackney carriages," "hackney coach," "carriages," and "carriage," whenever used in sections thirty-seven, forty to fifty-two (both inclusive), fifty-four, fifty-eight, and sixty to sixty-seven (both inclusive) of the principal Act shall, notwithstanding anything contained in section thirty-eight of that Act, be deemed to include every omnibus (*n*).

(2) The word "driver" or "drivers" when used in any of the said sections of the principal Act shall be deemed to include every conductor of any omnibus.

(3) For the purposes of sections fifty-four, fifty-eight, and sixty-six of the principal Act, the fare, according to the statement of fares exhibited on any omnibus, shall be deemed to be the fare allowed by the principal Act or authorised by any byelaw under that Act.

Licences may be granted for short periods.

5. Any licence may be granted under the principal Act to continue in force for such less period than one year as the Commissioners may think fit, and shall specify in the licence (*o*).

(*k*) As to what amounts to standing or plying for hire, reference may be made to the cases cited in the notes to 10 & 11 Vict. c. 89, s. 38, *ante*, p. 1465. It is important to observe that the words are not, as in the older Act, "standing or plying for hire *in a street*." An omnibus may, therefore, be standing or plying for hire while it is on private property, such as a railway station. See *Clarke* v. *Stanford* (1871), L. R. 6 Q. B. 357; 35 J. P. 662; *Allen* v. *Tunbridge* (1871), L. R. 6 C. P. 481; 35 J. P. 695; *Foinett* v. *Clark* (1877), 41 J. P. 359; *Skinner* v. *Usher* (1872), L. R. 7 Q. B. 423; 36 J. P. 693; *Curtis* v. *Embery* (1872), L. R. 7 Ex. 369.

(*l*) It seems to follow from these words that to be within this exception the omnibus must not be allowed to stand about for hire by anyone who may desire to use it, for it would then be standing or plying for hire; and that unless the Act is to apply the omnibus must be hired before it is brought out.

(*m*) An omnibus coming from one district will not be required to be licensed in another, though used for bringing passengers into the latter, unless it stands or plies for hire in the latter. An omnibus starting from outside the district and going to a point within the district where it waited from fifteen to twenty minutes for the purpose of taking up passengers, parcels, etc., for the return journey, was held not to come within the exception on the ground that it plied for hire within the district (*Dewhurst* v. *Eddles* (1893), 57 J. P. 373; 9 T. L. R. 494). And an omnibus which sometimes waited on the highway and sometimes commenced the return journey at once was held on the facts to be plying for hire and therefore not within the exception (*R.* v. *Fletcher* (1908), 72 J. P. 249; 98 L. T. 749).

(*n*) See these sections, *ante*.

(*o*) See the Town Police Clauses Act, 1847, s. 43, *ante*, p. 1467.

Byelaws.

6. The Commissioners may from time to time make byelaws (*oo*) for all or any of the following purposes, that is to say:

For regulating the conduct (*p*) of the proprietors, drivers, and conductors of omnibuses plying within the prescribed distance in their several employments, and determining whether such drivers and conductors shall wear any and what badges:

For regulating the manner in which the number of each omnibus corresponding with the number of its licence shall be displayed:

For regulating the number of persons to be carried by such omnibus, and in what manner such number is to be shown thereon:

For regulating the number and securing the fitness of the animals to be allowed to draw an omnibus, and for the removal therefrom of unfit animals:

For securing the fitness of the omnibus and the harness of the animals drawing the same:

For fixing the stands for omnibuses and the points at which they may stop a longer time than is necessary for the taking up and setting down of passengers desirous of entering or leaving the same:

For securing the safe custody and re-delivery of any property accidentally left in any omnibus, and fixing the charge to be made in respect thereof (*q*).

To provide for the carrying and the lighting of proper lamps for denoting the direction in which the omnibus is proceeding, and promoting the safety and convenience of the passengers carried thereby:

To provide for the exhibition on some conspicuous part of every omnibus of a statement in legible letters and figures of the fares to be demanded, and received from the persons using or carried for hire in such omnibus:

To prevent within the prescribed distance—

(a) the owner, driver, or conductor of any omnibus, or any other person on their or his behalf, by touting, calling out, or otherwise, from importuning any person to use or to be carried for hire in such omnibus, to the annoyance of such person or of any other person;

(b) the blowing of or playing upon horns or other musical instruments, or the ringing of bells, by the driver or conductor of any omnibus, or by any person travelling on or using any such omnibus.

Provided that nothing in this Act contained shall empower the Commissioners to fix the site of the stand of any omnibus in any railway station or in any yard adjoining or connected therewith, except with the consent of the railway company owning such site.

(*oo*) The L. G. B. have expressed the view that byelaws cannot be made under these Acts for the purpose of controlling the routes of motor omnibuses, and the Home Office are of opinion that this object cannot be attained by a town council under the Municipal Corporations Acts.

(*p*) The respondent was summoned for touting for a hackney carriage in a public thoroughfare contrary to a byelaw which provided: "A person shall not in any public thoroughfare in the district tout for a hackney carriage." He stood on a triangular piece of land at a street corner touting for hackney carriages, having received permission from the freeholders of the piece of land to stand on it for the purpose of his business. The piece of land was always open to the public, and the street (including the piece of land) had been declared a public highway. It was held that the fact that the piece of land on which the respondent stood belonged to private persons did not prevent his act from being an offence against the byelaw (*Derham* v. *Strickland* (1911), 75 J. P. 300; 104 L. T. 820).

(*q*) Up to this point there is little difference between the provisions of this section and those of the Town Police Clauses Act, 1847, s. 68, *ante*, p. 1472. The byelaws under this section do not regulate the hours of employment, but, on the other hand, they may regulate the fitness of the horses and harness. The rest of the section is an addition to the previous law as to hackney carriages.

THE ARBITRATION ACT, 1889.

(52 & 53 VICT. c. 49.) (*r*)

An Act for amending and consolidating the Enactments relating to Arbitration. [26th August 1889.]

REFERENCES BY CONSENT OUT OF COURT.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of court (*s*). Submission to be irrevocable, and to have effect as an order of court.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission (*t*). Provisions implied in submission.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred (*u*). Reference to official referee.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings (*x*). Powers to stay proceedings where there is a submission.

(*r*) The reason for the insertion of the above Act in this Appendix is that, by s. 24, it applies to arbitrations under the P. H. A., save in so far as its provisions are inconsistent with those of s. 180 of the P. H. A., 1875, *ante*, p. 425. It also applies to arbitrations with regard to adjustments under s. 68 of the L. G. A., 1894, *ante*, p. 1051. The notes are limited to an indication of the sections which do not apply to such arbitrations and to references to the chief decisions upon the Act. For full notes on the Act, see Yearly Supreme Court Practice, Vol. II.

(*s*) Where there is an agreement to refer to three arbitrators, one to be appointed by each party and one by the two arbitrators so appointed, the court has no power implied from this section to order a party to appoint an arbitrator (*In re Smith and Service and Nelson and Sons* (1890), 25 Q. B. D. 545). As to revocation on account of bias, see *In re Baring and Doulton* (1892), 61 L. J. Q. B. 704; *Eckersley* v. *Mersey Docks and Harbour Board*, [1894] 2 Q. B. 667; *In re Haigh and L. & N. W. Rail. Co.*, [1896] 1 Q. B. 649; or of misconduct, *In re Brien*, [1910] 2 I. R. 84. An appeal from a judge at chambers giving leave to revoke a submission to arbitration lies to the Court of Appeal and not to a Divisional Court (*In re Portland U. D. C. and Tilley & Co.*, [1896] 2 Q. B. 98); but see *In re Frere and Staveley Taylor & Co. and North Shore Mill Co., Ltd.*, [1905] 1 K. B. 366.

(*t*) See the notes to the Schedule, *post*, p. 1849. This section was held to apply to all submissions, whether made before or after the passing of this Act (*In re Williams and Stepney*, [1891] 2 Q. B. 257).

(*u*) This section cannot apply to arbitrations under the P. H. Acts.

(*x*) A county court judge has jurisdiction under this section to stay any legal proceedings in his court (*Morriston Tinplate Co.* v. *Brooker, Dore & Co.*, [1908] 1 K. B. 403). The court has a discretion to stay under this section (*In re Carlisle, Clegg* v. *Clegg* (1890), 44 Ch. D. 200; *Barnes* v. *Youngs*, [1898] 1 Ch. 414; *Hodson* v. *Railway Passengers Assurance*, [1904] 2 K. B. 833; *Bonnin* v. *Neame*, [1910] 1 Ch. 732). As to what amounts to a step in the proceedings, see *Chappell* v. *North*, [1891] 2 Q. B. 252; *Brighton Marine Palace Co.* v. *Woodhouse*, [1893] 2 Ch. 486; *Ives* v. *Willans*, [1894] 2 Ch. 478; *Adams* v. *Cattley* (1892), 66 L. T. 687; 40 W. R. 570; *Ford's Hotel Co.* v. *Bartlett*, [1896] A. C. 1;

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

5. In any of the following cases:

(a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator (*y*):

(b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy (*z*):

(c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him (*a*):

(d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy (*a*):

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the court or a judge may (*b*), on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Zalinoff v. *Hammond*, [1898] 2 Ch. 92; *County Theatres and Hotels, Ltd.* v. *Knowles*, [1902] 1 K. B. 480; *Richardson* v. *Le Maitre*, [1903] 2 Ch. 222). Where a receiver is appointed, an order may be made staying all proceedings, except for the purpose of carrying out the order for a receiver (*Pini* v. *Roncoroni*, [1892] 1 Ch. 633), or the motion for a receiver may be ordered to stand over till the completion of the arbitration (*Zalinoff* v. *Hammond*, *supra*). Where there is an agreement to refer to three arbitrators, one to be appointed by each party and one by the two arbitrators so appointed, a judge at chambers has jurisdiction to stay under this section (*Manchester Ship Canal Co.* v. *Pearson & Sons, Ltd.*, [1900] 1 Q. B. 606). Where works are constructed for a local authority under a contract which provides for the reference of disputes thereunder to an officer of the local authority, and the contractor sues the local authority on the contract, the court will not order the action to be stayed on the submission to arbitration, when the contractor charges the arbitrator with unreasonable conduct in relation to the works, and it appears that there is a substantial dispute between the parties as to the conduct of the arbitrator (*Blackwell & Co., Ltd.* v. *Derby Corporation* (1911), 75 J. P. 129). And see *Freeman & Sons* v. *Chester R. D. C.*, [1911] 1 K. B. 783; 75 J. P. 132; *Aird & Co.* v. *Bristol Corporation*, [1913] A. C. 241; 77 J. P. 209; *Doleman & Sons* v. *Ossett Corporation*, [1912] 3 K. B. 257; 77 J. P. 457.

A sewerage contract provided that no claim for extras should be allowed unless submitted to the engineers within a given time; that the engineers should be sole judges as to the method of carrying out the works, and the materials to be used in their construction; and that in case of any dispute arising at any time whether during the progress of the works or after completion, as to certain specified matters not including extras, and as to all other matters therein left to the decision of the engineers, their decision should be final and binding on all parties. It was held that a claim for extras was not within the scope of the arbitration clause, and consequently that an action by the contractor for the amount of the claim ought to be allowed to proceed (*Taylor* v. *Western Valleys* (*Monmouthshire*) *Sewerage Board* (1911), 75 J. P. 409).

This section has no application to arbitrations under the P. H. A., 1875, s. 180, *ante*, p. 425, but it will apply to arbitration clauses in contracts with sanitary authorities. See *Nuttall* v. *Manchester Corporation* (1892), 8 T. L. R. 513.

(*y*) This cannot apply to arbitrations under ss. 179, 180, of the P. H. A., 1875, *ante*, pp. 424, 425. It seems, however, to be applicable to arbitrations in respect of adjustments under s. 68 of the L. G. A., 1894, *ante*, p. 425.

(*z*) This cannot apply. See s. 180 (4)—(7), *ante*, p. 1051. See as to the effect of the clause, *In re Wilson and Eastern Counties Navigation and Transport Co.*, [1892] 1 Q. B. 81.

(*a*) This cannot apply to arbitrations under the P. H. A., 1875. See s. 180 (7), *ante*, p. 426.

(*b*) In ordinary cases this is equivalent to *must* (*In re Eyre and the Corporation of Leicester*, [1892] 1 Q. B. 136; 56 J. P. 228). See as to procedure under this section, *Taylor* v. *Denny, Mott and Dixon, Ltd.*, [1912] A. C. 666; 76 J. P. 417.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary contention— Power for parties in certain cases to supply vacancy.

(a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place (*c*);

(b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent (*c*).

Provided that the court or a judge may set aside any appointment made in pursuance of this section (*d*).

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power— Powers of arbitrator.

(a) To administer oaths to or take the affirmations of the parties and witnesses appearing (*e*); and

(b) To state an award as to the whole or part thereof in the form of a special case for the opinion of the court (*f*); and

(c) To correct in an award any clerical mistake or error arising from any accidental slip or omission (*f*).

8. Any party to a submission may sue out a writ of subpœna ad testificandum, or a writ of subpœna duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action (*f*). Witnesses may be summoned by subpœna.

9. The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not (*g*). Power to enlarge time for making award.

10.—(1) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire. Power to remit award.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order (*h*).

(*c*) A similar provision is contained in s. 180 (5), *ante*, p. 425.

(*d*) An appointment under s. 180 (5) will not, apparently, be made in pursuance of this section, though the effect of the two provisions is similar.

(*e*) See s. 180 (12), *ante*, p. 426.

(*f*) This provision will apply to an arbitration under s. 180. An appeal lies to the Court of Appeal from a decision of the High Court upon an award stated as a special case (*In re Kirkleatham L. B. and Stockton and Middlesbrough Water Board*, [1893] 1 Q. B. 375; 57 J. P. 421). As to the costs of the special case, see *In re Gonty and Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439.

(*g*) This section enables the court to enlarge the time beyond the two months limited by s. 180 (9) of the P. H. A., 1875 (*In re Knowles & Sons and Bolton Corporation*, [1900] 2 Q. B. 253).

(*h*) This section will, apparently, apply to an arbitration under s. 180. The court may, under this section, remit an award upon the ground that fresh evidence has been discovered since the award was made, although the arbitrator does not join in asking the court to remit it. Such evidence need not be strictly legal evidence, though it must be such as may affect the arbitrator's decision (*In re Keighley and Durant*, [1893] 1 Q. B. 405). Under this section matters may be remitted for reconsideration, although the arbitrator, having made his award, is *functus officio* (*In re Stringer and Riley Brothers*, [1901] 1 K. B. 105).

Power to set aside award.

11.—(1) Where an arbitrator or umpire has misconducted himself, the court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside (*i*).

Enforcing award.

12. An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect (*k*).

REFERENCES UNDER ORDER OF COURT (*l*).

Reference for report.

13.—(1) Subject to Rules of Court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

(2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Power to refer in certain cases.

14. In any cause or matter (other than a criminal proceeding by the Crown)—

(a) If all the parties interested who are not under disability consent: or,

(b) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury, or conducted by the court through its other ordinary officers: or

(c) If the question in dispute consists wholly or in part of matters of account (*m*);

the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court (*n*).

Powers and remuneration of referees and arbitrators.

15.—(1) In all cases of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the court,

(*i*) As to misconduct, see *In re Kenworthy and Queen Insurance Co.* (1893), 9 T. L. R. 181; *In re Gregson and Armstrong* (1894), 70 L. T. 106; 10 R. 408; *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131; *Schofield* v. *Allen* (1904), 116 L. T. Newsp. 239; 48 Sol. J. 176; *In re Enoch and Zaretzky, Bock & Co.*, [1910] 1 K. B. 327. The order setting aside the award is an interlocutory and not a final order (*Re Croasdell and Cammell, Laird & Co.*, [1906] 2 K. B. 569).

(*k*) In some cases this section may also apply, as it affords another remedy in addition to that given by s. 180 (14) of the P. H. A., 1875, *ante*, p. 426. But an award under s. 150 cannot be enforced under this section (*In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 60 J. P. 708). Summons to enforce an award under s. 12 cannot be served upon a foreigner resident out of the jurisdiction (*Rasch & Co.* v. *Wulfert*, [1904] 1 K. B. 118). An appeal from an order of a judge at chambers under this section lies direct to the Court of Appeal, and not to a Divisional Court (*Re Colman and Watson*, [1908] 1 K. B. 47).

(*l*) The sections in this part of the Act apply only to references by the court, and not to arbitrations under s. 180 of the P. H. A., 1875. They will, however, apply to actions by or against sanitary authorities.

(*m*) This applies where the main, although not the only, question in dispute is a matter of account (*Hurlbatt* v. *Barnett*, [1893] 1 Q. B. 77).

(*n*) Where an action has been referred for trial under this section, the court or a judge still retains the power, and the referee or arbitrator has also jurisdiction, to order inspection of property. As a general rule, the most convenient course is to apply to the referee or arbitrator in the first instance (*Macalpine* v. *Calder*, [1893] 1 Q. B. 545). An appeal lies to the Court of Appeal (without leave) from an order of the High Court refusing to order a new trial (*Munday* v. *Norton*, [1892] 1 Q. B. 403).

and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court (*o*), and subject thereto as the court or a judge may direct.

(2) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury (*p*).

(3) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the court or a judge shall be determined by the court or a judge (*q*).

16. The court or a judge shall, as to references under order of the court or a judge, have all the powers which are by this Act conferred on the court or a judge as to references by consent out of court. Court to have powers as in references by consent.

17. Her Majesty's Court of Appeal shall have all the powers conferred by this Act on the court or a judge thereof under the provisions relating to references under order of the court. Court of Appeal to have powers of court.

General.

18.—(1) The court or a judge may order that a writ of subpœna ad testificandum or of subpœna duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom. Power to compel attendance of witness in any part of the United Kingdom and to order habeas corpus to issue.

(2) The court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire (*r*).

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference (*s*). Statement of case pending arbitration.

(*o*) See R. S. C., Order XXXVI., rr. 45 *et seq.*

(*p*) As to the power of the court under this sub-section, see *Darlington Waggon Co.* v. *Harding and Trouville Pier and Steamboat Co.*, [1891] 1 Q. B. 245. As to its effect on costs, see *Carr* v. *Dougherty* (1898), 67 L. J. Q. B. 371; 14 T. L. R. 237. The sub-section does not apply where an action is stayed and arbitration directed under a submission by the parties (*Warburg* v. *McKerrow* (1904), 90 L. T. 644).

(*q*) As to the right of the arbitrator to recover fees, see *Willis* v. *Wakeley* (1891), 7 T. L. R. 604.

(*r*) This section will apply to arbitrations under the P. H. A., 1875, s. 180, *ante*, p. 425.

(*s*) This section will apply to arbitrations under the P. H. A., 1875. See the judgments in *Sandgate L. B.* v. *Keene*, [1892] 1 Q. B. 831; 56 J. P. 484. Appeal does not lie to the Court of Appeal from the decision of the court on a case stated under this section (*In re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613; 55 J. P. 534). As to the power to order a case to be stated, see *Tabernacle Permanent Building Society* v. *Knight*, [1892] A. C. 298; 56 J. P. 709; *May* v. *Mills* (1914), 30 T. L. R. 287. In the case of *In re Kent C. C. and Sandgate L. B.*, [1895] 2 Q. B. 43; 59 J. P. 456, it was held that the court has power to require an arbitrator appointed by the L. G. B. in an arbitration under s. 11 (3) of the L. G. A., 1888, to state a special case under this section. The fact of there being a question of law to be decided was held not sufficient ground for a case to be ordered unless there is some evidence that the arbitrators are going beyond their jurisdiction, or are about to act contrary to law (*In re Gray & Co. and Boustead & Co.* (1892), 8 T. L. R. 703). But subsequently it was held that a case may be ordered although the arbitrator has expressed no opinion adverse to the applicant (*In re Spillers and Baker and Leetham & Sons*, [1897] 1 Q. B. 312).

An order of a judge at chambers under this section directing the arbitrator to state a case is not a matter of practice and procedure within s. 1 (4) of the Judicature Act, 1894, and therefore no appeal lies to the Court of Appeal from such an order (*Re Frere and Staveley, Taylor & Co. and North Shore Mill Co.*, [1905] 1 K. B. 366).

Costs.

20. Any order made under this Act may be made on such terms as to costs or otherwise, as the authority making the order thinks just (*t*).

Exercise of powers by masters and other officers.

21. Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the court or a judge (*u*).

22. [*Penalty for perjury.*] (*x*)

Crown to be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the court or a judge to order any proceedings to which her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown.

Application of Act to references under statutory powers.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act, as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act (*y*).

25. [*Saving for pending arbitrations.*]

26.—(1) [*Repeal of enactments in Second Schedule.*]

(2) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

Definitions.

27. In this Act, unless the contrary intention appears,—

"Submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not (*z*).

"Court" means her Majesty's High Court of Justice.

"Judge" means a judge of her Majesty's High Court of Justice.

"Rules of Court" means the rules of the Supreme Court made by the proper authority under the Judicature Acts.

Extent.

28. This Act shall not extend to Scotland or Ireland.

(*t*) See *Re Knight and Tabernacle Permanent Building Society*, *supra*, and R. S. C., Order LXV.

(*u*) See R. S. C., Order LIV., r. 12A, the effect of which is that any application under this Act can be dealt with by a Master, except applications under s. 11 to remove an arbitrator or to set aside the award.

(*x*) Repealed: see now the Perjury Act, 1911. If the evidence be merely prepared though not used, it is an indictable misdemeanor (*R.* v. *Vreones*, [1891] 1 Q. B. 360; 55 J. P. 536).

(*y*) For the effect of this section, see note (*r*), *ante*, p. 1843, and *In re Willesden L. B. and Wright*, *ante*, p. 1846.

(*z*) The appointment of the arbitrators under s. 180 of the P. H. A., 1875, is to be deemed a submission. See sub-s. (2) of that section, *ante*, p. 425.

For the construction of this definition, see *Caerleon Tinplate Co.* v. *Hughes* (1891), 60 L. J. Q. B. 640; 65 L. T. 118; *Baker* v. *Yorkshire Fire and Life Assurance Co.*, [1892] 1 Q. B. 144; *Aitken* v. *Batchelor* (1893), 62 L. J. Q. B. 193; 68 L. T. 530; *Austrian Lloyd Steamship Co.* v. *Gresham Life Assurance Society*, [1903] 1 K. B. 249. "Future" differences do not include differences arising after the order for arbitration is made; *per* Lord HALSBURY, C., in *London and G. W. Joint Rail. Cos.* v. *Billington*, [1899] A. C. 79, at p. 81. But all matters material and incidental to the differences within the submission are within the scope of the arbitration (*Midland Rail. Co.* v. *Loseby*, [1899] A. C. 133).

29. [*Commencement of Act, January* 1, 1890.]

30. This Act may be cited as the Arbitration Act, 1889. Short title.

SCHEDULES.

THE FIRST SCHEDULE.

Provisions to be Implied in Submissions.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator (*a*).

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award (*a*).

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award (*b*).

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators (*c*).

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award (*d*).

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require (*e*).

g. The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation (*e*).

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively (*f*).

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client (*g*).

THE SECOND SCHEDULE (*h*).

(*a*) This clause does not apply to arbitrations under the P. H. A., 1875, having regard to ss. 179, 180 (7), *ante*, pp. 424, 426. It seems, however, applicable to arbitrations as to adjustments under s. 68 of the L. G. A., 1894, *ante*, p. 1051.

(*b*) This clause does not apply having regard to s. 180 (8), (9). As to its construction, see *In re Baring Gould and Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80.

(*c*) See s. 180 (8), and the note thereto, *ante*, p. 426.

(*d*) This clause does not apply. See s. 180 (9), and the note thereto, *ante*, p. 426.

(*e*) These clauses slightly extend the powers conferred by s. 180 (12).

(*f*) See similar provisions in s. 180 (15), *ante*, p. 426.

(*g*) This extends the powers given to the arbitrators by s. 180 (13), *ante*, p. 426. The amount of the costs must be stated in the award, otherwise the costs of the reference and award, including the arbitrator's fees, are liable to taxation in the ordinary course,

(*h*) For note (*h*) see next page.

THE CUSTOMS AND INLAND REVENUE ACT, 1890.

(53 & 54 VICT. c. 8.)

An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. [9th June 1890.]

Short title.

1. This Act may be cited as the Customs and Inland Revenue Act, 1890.

* * * * *

Inhabited house duty reduced as respects houses of small annual value.

25.—(1) . . . the duty payable upon an inhabited dwelling-house under the Act of the fourteenth and fifteenth years of her Majesty's reign, chapter thirty-six, at the rate of sixpence for every twenty shillings of the annual value of the house, with the household and other offices, yards, and gardens therewith occupied is, in case such annual value shall not exceed forty pounds, hereby reduced to the rate of twopence, and is, in case such annual value shall exceed forty pounds and shall not exceed sixty pounds, hereby reduced to the rate of fourpence.

(2) . . . the duty payable upon an inhabited dwelling-house under the said Act at the rate of ninepence for every twenty shillings of the annual value of the house with the household and other offices, yards, and gardens therewith occupied is, in case such annual value shall not exceed forty pounds, hereby reduced to the rate of threepence, and is, in case such annual value shall exceed forty pounds and shall not exceed sixty pounds, hereby reduced to the rate of sixpence (*i*).

Reduction of inhabited house duty in the case of lodging-houses and exemption of houses for artizans' dwellings.

26.—(1) Where any dwelling-house chargeable to inhabited house duty under the said Act of the fourteenth and fifteenth years of her Majesty's reign, chapter thirty-six, at the rate of ninepence, or at the reduced rate of

(*In re Prebble and Robinson*, [1892] 2 Q. B. 602 ; 57 J. P. 54). Where taxation is necessary the Taxing Master may reduce the fee charged for the award (*Re Frank James & Sons*, [1903] W. N. 99). The award must not be so stated as to exclude the right of the parties to challenge the amount of the fees charged by the arbitrator for his services, as by including them in a lump sum for costs (*Re Gilbert and Wright* (1904), 68 J. P. 143 ; 20 T. L. R. 164). If the arbitrators are not to have power over the costs of the award they must be expressly excluded from the submission (*Re Walker* (1882), 9 Q. B. D. 434), so also as to the costs of negotiating and preparing the submission (*Re Autothreptic Co.* (1888), 21 Q. B. D. 182). Costs of a special case under s. 19 fall under the provisions of this Schedule unless the court deals with them when the order for a special case is made (*Re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613 ; 55 J. P. 534). The bill of a solicitor employed by the arbitrator in preparing the award may be taxed under s. 38 of the Solicitors Act, 1843, where the amount has been paid on taking up the award (*Re Collyer Bristow & Co.*, [1901] 2 K. B. 839). See also generally as to taxation the judgment of FARWELL, L.J., in *Re Cannings, Ltd., and Middlesex C. C.*, [1907] 1 K. B., at p. 57 ; 71 J. P. 46. Where a whole cause is referred to a special referee for trial, and the referee awards that one of the parties recover against the other the costs of the action, such costs include the costs of the reference (*Patten* v. *West of England Iron, Timber, and Charcoal Co.*, [1894] 2 Q. B. 159 ; 58 J. P. 400). As to reviewing taxation, see *Malvern U. D. C.* v. *Malvern Link Gas Co.* (1900), 83 L. T. 326. As to the recovery of arbitrators' fees by action, see *Llandrindod Wells Water Co.* v. *Hawksley* (1904), 68 J. P 242 ; 20 T. L. R. 241 ; *Brown* v. *Llandovery Terra Cotta Co., Ltd.* (1909), 25 T. L. R. 625.

(*h*) This schedule of enactments repealed (itself repealed by the S. L. R. A., 1908), included 9 Will. 3, c. 15 ; 3 & 4 Will. 4, c. 42, ss. 39—41 ; the Common Law Procedure Act, 1854, ss. 3—17 ; the Judicature Act, 1873, ss. 56 (part), 57, 58, 59 ; the Judicature Act, 1884, ss. 9—11.

(*i*) Words repealed by S. L. R. A., 1908, or relating to Scotland only are omitted. Under the House Tax Act, 1851, inhabited house duty was charged at 6*d*. in the pound upon houses occupied partly for trade purposes, licensed houses, and farmhouses occupied by a tenant or farm servant. All other houses were charged at 9*d*. in the pound.

sixpence or threepence, according to this Act, for every twenty shillings of annual value is occupied in any year by a person for the main purpose of letting furnished lodgings therein as a means of livelihood, it shall be lawful for such person before *the first day of July* (*k*) to register his name in a list of lodging-house keepers to be kept by the clerk to the Commissioners acting in the execution of the Acts relating to the inhabited house duties, and, after such registration and before *the first day of October* (*k*) to make application to the said Commissioners for the reduction of the rate of charge of inhabited house duty from ninepence to sixpence, or for the further reduction of the reduced rate of sixpence to fourpence, or of threepence to twopence, and on due proof of the facts to the satisfaction of the said Commissioners they shall cause the charge or amount for such year to be reduced or amended accordingly.

(2) The assessment to inhabited house duty of any house originally built or adapted by additions or alterations and used for the sole purpose of providing separate dwellings *for persons at rents not exceeding for each dwelling the rate of seven shillings and sixpence a week, and occupied only by persons paying such rents* (*l*), shall be discharged by the said Commissioners, provided that a certificate of the medical officer of health for the district in which the house is situate or other medical practitioner appointed as hereinafter provided shall be produced to them to the effect that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements. The medical officer of health of a district on request by the person who would be liable to pay the house duty on any house in the district, if the duty were not discharged as aforesaid, shall examine the house for the purpose of ascertaining whether such a certificate can properly be given, and if the house be constructed so as to afford such accommodation and due provision be made as aforesaid, shall certify the same accordingly; provided that the authority, if they are of opinion that the duties which would devolve on the medical officer of health under this section could not be performed by him without interference with the due performance of his ordinary duties, may appoint some other legally qualified medical practitioner having the qualification

(*k*) For "the first day of July" read now "the first day of October" (1 Edw. 7, c. 7, s. 13). For "the first day of October" read now "the first day of November" (1 Edw. 7, c. 7, s. 13).

(*l*) The Customs and Inland Revenue Act, 1891, s. 4, substituted for the words italicised the words "where the annual value of each dwelling shall not amount to twenty pounds." It also granted an abatement of duty where the annual value did not exceed £40. That section has, however, been repealed by the Revenue Act, 1903, which now regulates the exemption and abatement: see s. 11 thereof, *post*, p. 2041. By s. 35 (1) of the Housing, Town Planning, etc., Act, 1909, a house occupied for the sole purpose of letting lodgings to persons of the working classes at a charge *per* head not exceeding sixpence *per* night enjoys a similar exemption; see that section, *ante*, p. 1175.

The owner of a house built for artizans' dwellings, and used for the sole purpose of separate dwellings, was held entitled to exemption under this sub-section, notwithstanding the existence of a common front door, entrance hall, and staircase to, and the absence of complete structural division of, each separate set of rooms; and notwithstanding that all the doors of each set of rooms opened to the common entrance hall or landing, and that the tenants had the use of a common washhouse on certain specified days (*Seaman* v. *Lee* (1899), 68 L. J. Q. B. 593; 63 J. P. 499). But where a building erected for the purpose of providing accommodation for men of the working classes contained separate cubicles arranged on three landings round a central hall, and on the ground floor there were reading rooms, dining rooms, scullery, lavatories, baths, and washhouses and catering departments, which were used by the occupants in common, and there were also quarters for the superintendent and staff, and each cubicle provided separate accommodation for one man, and a charge of 6*d*. a night was made for the use of it and of the other parts of the buildings, it was held that the cubicles were not "separate dwellings" but merely sleeping places and that therefore the building was not exempt (*London C. C.* v. *Cook*, [1906] 1 K. B. 278; 70 J. P. 105).

required for office of medical officer of health of the district to make such examinations and give such certificates as aforesaid (*m*).

* * * * *

THE WORKING CLASSES DWELLINGS ACT, 1890.

(53 & 54 VICT. c. 16.)

An Act to facilitate Gifts of Land for Dwellings for the Working Classes in Populous Places. [25th July 1890.]

Exemption from 51 & 52 Vict. c. 42, Parts I., II., and 7 & 8 Vict. c. 97, s. 16, of gifts for working classes dwellings.

1. Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, . . . shall not apply to any assurance, by deed, or will, of land, or of personal estate to be laid out in land, for the purpose of providing dwellings for the working classes in any populous place (*n*).

(*m*) This section imposes important duties upon medical officers of health. On September 19th, 1890, the L. G. B. issued a Circular to medical officers calling attention to the section. The following is the text of the Circular:

I am directed by the Local Government Board to draw your attention to the provisions contained in s. 26 (2) of the Customs and Inland Revenue Act, 1890, with respect to the exemption of certain houses from inhabited house duty.

The section provides that the assessment to inhabited house duty of any house originally built, or adapted by additions or alterations, and used for the sole purpose of providing separate dwellings for persons at rents not exceeding for each dwelling the rate of seven shillings and sixpence a week, and occupied only by persons paying such rents, is to be discharged by the Commissioners acting in the execution of the Acts relating to the inhabited house duties, provided that a certificate is produced to them to the effect that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements. The certificate is to be obtained from the medical officer of health for the district in which the house is situate, or from some other medical practitioner appointed as hereinafter mentioned.

The Act makes it the duty of the medical officer of health of a district, on request by the person who would be liable to pay the house duty on any house in the district, if the duty were not discharged by the Commissioners, to examine the house for the purpose of ascertaining whether a certificate can properly be given; and if the house is constructed so as to afford suitable accommodation for each of the families or persons inhabiting it, and due provision is made for their sanitary requirements, he must certify the same accordingly.

The Act, however, provides that when the authority by whom the medical officer of health is appointed are of opinion that the duties which would thus devolve on him could not be performed by him without interference with the due performance of his ordinary duties, they may appoint some other legally qualified medical practitioner having the qualification required for the office of medical officer of health of the district, to make the examinations and give the certificates above referred to.

I am directed to add that the Act does not empower a medical officer of health to charge any fee for a certificate under it, nor is he entitled to any remuneration for the discharge of the duties imposed on him by the Act in addition to the salary for the time being assigned to him as medical officer of health.

I am, Sir, Your obedient Servant,
HUGH OWEN,
Secretary.

In a Circular of the same date, the Board, referring to the last paragraph of the above letter, stated that in cases where the remuneration of the medical officer of health was subject to their approval they would be prepared to assent to a reasonable increase of such remuneration, if the local authority should consider that the duties imposed on the officer by the statute were sufficiently onerous to entitle him to such increase. The Board thought that if the local authority appointed some other medical practitioner to perform the duties referred to, it would be competent for them to pay him a suitable salary without any sanction on the part of the Board.

(*n*) Words relating to Ireland only are omitted from this section. But for this provision land could not have been conveyed, nor could money to be laid out in land have been assured by deed or will for the purpose of working classes dwellings. The above Act creates an exception similar to those created under Part III. of the Mortmain and Charitable

Provided as follows:

(i.) The quantity of land which may be assured by will under this section shall not exceed five acres; and

(ii.) The deed or will containing the assurance must, within six months, in the case of a deed after the execution thereof, or in the case of a will after the probate thereof, be enrolled in the books of the Charity Commissioners, if the land is situate in England or Wales . . .

For the purposes of this Act, the expression "populous place" means the administrative county of London, any municipal borough, any urban sanitary district, and any other place having a dense population of an urban character (*o*).

2. This Act shall extend to any assurance by deed made within twelve months before the passing of this Act by a person alive at that passing as if it had been made after the passing, except that the assurance shall be enrolled or registered as aforesaid within six months after the passing of this Act. Application of Act.

3.—(1) This Act may be cited as the Working Classes Dwellings Act, 1890. Short title and construction

(2) Expressions used in this Act shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888 (*p*). 51 & 52 Vict. c. 42.

THE TENANTS COMPENSATION ACT, 1890.

(53 & 54 VICT. c. 57.) (*q*)

An Act to amend the Law with respect to Compensation due to Tenants on Land under Mortgage. [18th August 1890.]

Whereas it is expedient to amend the Agricultural Holdings Act, 1883 (*q*), *and the Allotments and Cottage Gardens Compensation for Crops Act,* 1887, *in so far as they relate to the compensation paid to tenants for improvements where land is under mortgage:* 46 & 47 Vict. c. 61. 50 & 51 Vict. c. 26.

. . . . .

1. This Act shall be construed as one with *the Agricultural Holdings Act, 1883, and* (*q*) the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (in this Act referred to as the principal Acts), and this Act may be cited as the Tenants Compensation Act, 1890. Construction and short title.

2. (*q*) Where a person occupies land under a contract of tenancy with the mortgagor, whether made before or after the passing of this Act, which is not binding on the mortgagee of such land, then— Compensation to tenants, when mortgagee in possession.

(1) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mort-

Uses Act, 1888, *ante*, p. 1833; *cf.* also the Housing, Town Planning, etc., Act, 1909, s. 8, *ante*, p. 1159. But apparently this is not an Act dealing with charity matters (*Re Sutton, Lewis* v. *Sutton*, [1901] 2 Ch. 640; 66 J. P. 39).

(*o*) The expression "populous place" may include a part of a rural district which is thickly populated.

(*p*) See s. 10 of that Act, *ante*, p. 1834, which contains definitions of the terms "assurance," "will," and "land."

(*q*) This Act amends the Allotments and Cottage Gardens Compensation for Crops Act, 1887, *ante*, p. 1794, by providing for cases where the contract of tenancy has been made with a mortgagor, and is not binding on the mortgagee, and the mortgagee has taken possession. It applied originally to other agricultural holdings, but the Agricultural Holdings Act, 1908, repealed the italicised words in ss. 1, 2, except so far as relates to compensation under the Act of 1887, ss. 3, 4. See s. 12 of the Act of 1908 for substituted provisions now applicable to other holdings.

gagee taking possession be due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the land, whether under the principal Acts or the custom of the country, or agreements sanctioned by the principal Acts;

Provided that any sum ascertained to be due to the occupier for such compensation or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the land, and recovered as compensation under the principal Acts, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance only with section thirty-one of the Agricultural Holdings Act, 1883, as if the mortgagee were the landlord within the meaning of that section.

(2) Before the mortgagee deprives the occupier of possession of the land otherwise than in accordance with the said contract, he shall give to the occupier six months' notice in writing of his intention so to deprive him, and if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived, and such compensation shall be determined in like manner as compensation under the principal Acts, and shall be set off, charged, and recovered in manner before provided in this section. This sub-section shall only apply where the said contract is for a tenancy from year to year, or for a term of years not exceeding twenty-one, at a rack-rent.

3. [*Charge for compensation to be registered.*] (*r*)

4. [*Exception of tithe rent-charge.*] (*r*)

Extent of Act. **5.** This Act shall not apply to Scotland or Ireland.

THE RAILWAY AND CANAL TRAFFIC (PROVISIONAL ORDERS) AMENDMENT ACT, 1891.

(54 & 55 VICT. c. 12.) (*s*)

An Act to remove doubts as to the Powers of Public Bodies in reference to Provisional Order Bills under the Railway and Canal Traffic Act, 1888.

[11th May 1891.]

Whereas (*t*)

. . . . .

Powers of governing bodies and county **1.** Every governing body within the meaning of the Borough Funds Act (*u*) . . . and every county council shall be entitled to be a petitioner

(*r*) See note (*q*), *ante*, p. 1853.

(*s*) This Act amends the Railway and Canal Traffic Act, 1888, s. 24, *ante*, p. 1818. Its effect so far as regards sanitary authorities is to enable them to petition against and oppose any Bill confirming any provisional order under that section, subject only to compliance with the requirements of the Borough Funds Acts, 1872 and 1903. Words relating to Scotland or Ireland only have been omitted throughout the Act. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*t*) The preamble (repealed by the S. L. R. A., 1908), after referring to the Borough Funds Act, 1872, the L. G. A., 1888, and s. 24 of the Railway and Canal Traffic Act, 1888, recited that doubt had been felt whether governing bodies as defined by the Act of 1872

(*u*) For note (*u*) see next page.

and to appear and oppose any Bill to confirm any provisional order made under section twenty-four of the Railway and Canal Traffic Act, 1888 (*v*), and to provide or contribute towards providing the expenses of the appearance or opposition of a petitioner out of the funds or rates under their respective control, as if the Bill for confirming such provisional order were a local or personal Bill within the meaning of section two of the Borough Funds Act, . . . and the provisions of the said last-mentioned Act . . . shall apply to any such appearance or opposition, and to any expenses incurred or to be incurred in relation thereto : Provided that in the case of a county council no consent of owners and ratepayers shall be required. councils with reference to Bills for confirming provisional orders made under 51 & 52 Vict. c. 25, s. 24.

2. This Act may be cited as "The Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891." Short title.

THE MUSEUMS AND GYMNASIUMS ACT, 1891.

(54 & 55 VICT. c. 22.)

An Act to enable Urban Authorities to provide and maintain Museums and Gymnasiums. [3rd July 1891.]

1. This Act may be cited as "The Museums and Gymnasiums Act, 1891." Short title.

2.—(1) This Act shall extend to any district where the same is adopted as hereinafter provided, but only so far as the adoption extends. Extent of Act.

(2) This Act shall not extend to Scotland or the administrative county of London.

3.—(1) This Act may be adopted by any urban authority (*x*) for their district either wholly or so far as it relates to museums only or to gymnasiums only. Adoption of Act.

(2) The adoption shall be by a resolution passed at a meeting of the urban authority, and one month at least before such meeting special notice of the meeting and of the intention to propose such resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a) Given in the mode in which notices to attend meetings of the authority are usually given ; or

(b) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England.

(3) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church

and county councils had power to apply funds or rates under their control in opposing, or subscribing towards the opposition of, any Bill to confirm a Provisional Order under s. 24 of the Act of 1888, and that it was expedient to remove such doubts.

(*u*) As amended by the Borough Funds Act, 1903, s. 7 (2), *post*, p. 2033. See also s. 1 of the Act of 1872, *ante*, p. 1566. The expression "governing body" does not include a rural authority. See note (*g*) on p. 1566, *ante*.

(*v*) See that section, *ante*, p. 1818.

(*x*) See the definition of an urban authority in s. 14, *post*, p. 1858. See also the power of an urban authority to close during the winter months a swimming bath established by them under the Baths and Washhouses Act, 1878, s. 5, and to establish a gymnasium therein, *ante*, p. 1670.

and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at a time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation the Act shall extend to that district.

(4) A copy of the resolution shall be sent to the Local Government Board.

(5) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement (*y*).

Power to provide museum and gymnasium.

4. An urban authority may provide and maintain museums for the reception of local antiquities or other objects of interest, and gymnasiums with all the apparatus ordinarily used therewith, and may erect any buildings, and generally do all things necessary for the provision and maintenance of such museums and gymnasiums (*z*).

Admission to museum.

5. A museum provided under this Act shall be open to the public not less than three days in every week free of charge, but subject thereto an urban authority may admit any person or class of persons thereto as they think fit, and may charge fees for such admission, or may grant the use of the same or of any room therein, either gratuitously or for payment, to any person for any lecture or exhibition, or for any purpose of education or instruction, and the admission to the museum or room the use of which is so granted may be either with or without payment as directed by the urban authority, or with the consent of the urban authority by the person to whom the use of the museum or room is granted.

Admission to gymnasium.

6.—(1) A gymnasium provided under this Act shall be open to the public free of charge for not less than two hours a day during five days in every week.

(2) Subject thereto the urban authority—

(a) may regulate the admission of the public to such gymnasium, either by classes or otherwise as they think fit, and may charge fees for such admission; and

(b) may, for not more than two hours in each day, grant the exclusive use thereof to any person or body of persons for the purpose of gymnastic exercises, for such payment and on such terms and conditions as they think fit.

(3) An urban authority may (for not more than twenty-four days in one year nor more than six consecutive days) close the gymnasium for use as a gymnasium, and grant the use of the same gratuitously or for payment to any person for the purpose of any lecture, exhibition, public meeting, enter-

(*y*) The provisions of the above section as to the adoption of this Act are, with one exception, identical with those of the Infectious Disease (Prevention) Act, 1890, s. 3, *ante*, p. 806, and the reader is referred to the notes on that section. The exception just mentioned is that in sub-s. (2), which requires the notices to be affixed to church and chapel doors. As to this, see the note to the similar provision in the P. H. A., 1875, Sched. III., r. 4, *ante*, p. 684.

(*z*) The L. G. B. informed an urban district council that they were disposed to think that under this Act the council could only provide and maintain a museum to receive such things as are given them from time to time or they are able to collect without expenditure of money. "It appears to the Board, however, that the wider powers of the Public Libraries Acts would enable the council to purchase such objects as can reasonably be regarded as specimens of art and science, including archæological specimens."

tainment, or other public purpose, and the admission on such days shall be either with or without payment as directed by the urban authority, or with the consent of the urban authority by the person to whom the use of the same is granted.

7.—(1) An urban authority may make regulations (*a*) for all or any of the following matters, namely,— Regulations and byelaws.

(a) For fixing the days of the week or hours of the day, as the case may be, during which the museum or gymnasium is to be open to the public free of charge :

(b) For giving special facilities to students for the use of the museum :

(c) For fixing the fees to be paid for the admission of persons to the museum and for the use thereof either by students or in any other special manner :

(d) For regulating the use of the gymnasium either by classes or otherwise, and fixing the scale of fees to be paid for such use :

(e) For prescribing conditions on which the exclusive use of the museum, or any room therein, or of the gymnasium is granted in any case :

(f) For determining the duties of the instructor, officers, and servants of the urban authority in connection with a museum or gymnasium :

(g) Generally for regulating and managing the museum or gymnasium.

(2) The urban authorities may make byelaws for regulating the conduct of persons admitted to the museum or gymnasium, and may by any such byelaw provide for the removal from the museum or gymnasium of any person infringing any such byelaw by any officer of the urban authority or by any constable.

All the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*b*), and any enactment amending or extending those sections, shall apply to all byelaws from time to time made by an urban authority under the powers of this Act. 38 & 39 Vict. c. 55.

8. An urban authority may at such time as they think fit close a museum or gymnasium provided by them for repairs, and shall give a fortnight's notice of their intention to close the same by affixing a notice to that effect on the door of the museum or gymnasium, as the case may be, or otherwise as they think fit. Closing of museum or gymnasium for repairs.

9. An urban authority may appoint and pay such officers and servants as they think fit for the purpose of a museum or gymnasium provided under this Act, and may employ and pay instructors in connection with a gymnasium. Appointment of officers and servants for museum and gymnasium.

10.—(1) The fees and other money received by an urban authority under this Act shall be applied in defraying the expenses of the museum or gymnasium in respect of which they are received. Expenses and borrowing.

(2) So far as such expenses are not so defrayed, they shall be defrayed as part of the general expenses of the execution by the urban authority of the Public Health Acts (*c*).

(3) An urban authority may borrow for the purposes of this Act in like manner and subject to the like conditions as for the purpose of defraying the said general expenses, and for that purpose sections two hundred and

(*a*) Regulations made by an urban authority need no confirmation. See s. 188 of the P. H. A., 1875, *ante*, p. 446.

(*b*) See these sections, *ante*, pp. 431—445. These byelaws must be confirmed by the L. G. B.

(*c*) See s. 207 of the P. H. A., 1875, *ante*, p. 468. The expenses will generally fall on the general district rate.

thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine, both inclusive, of the Public Health Act, 1875 (relating to borrowing) (*d*), and sections two hundred and forty-two and two hundred and forty-three of the same Act (relating to loans by the Public Works Loan Commissioners) (*d*), as amended by section two of the Public Works Loans Act, 1879 (*f*), shall apply.

38 & 39 Vict. c. 55.

42 & 43 Vict. c. 77.

(4) Separate accounts shall be kept of the receipts and expenditure of an urban authority in connection with any museum or gymnasium established under this Act, and such accounts shall be audited in like manner and with the like power to the officer auditing the same, and with the like incidents and consequences as the accounts of the urban authority are for the time being required to be audited by law (*g*).

(5) The amount expended by an urban authority under this Act shall not in any year exceed the amount produced by the rate of a halfpenny in the pound for a museum, and the like amount for a gymnasium established under this Act.

Acquisition of land.

11.—(1) Land for the purposes of this Act may be acquired by an urban authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of land) (*d*) shall apply accordingly, but no land shall be so acquired otherwise than by agreement.

(2) An urban authority may, with the consent of the Local Government Board, appropriate, for the purposes of this Act, any land which may be for the time being vested in them, or at their disposal.

Power to sell museum or gymnasium in certain cases.

12.—(1) Where it appears to an urban authority that a museum or gymnasium which has been established under this Act for seven years or upwards is unnecessary or too expensive, they may, with the consent of the Local Government Board, sell the same for the best price that can reasonably be obtained for the same, and shall convey the same accordingly.

(2) Any moneys arising from such sale shall be applied toward the repayment of any money borrowed for the purpose of the museum or gymnasium sold, and, so far as not required for that purpose, shall be applied to any purpose to which capital moneys are properly applicable, and which may be approved by the Local Government Board.

Powers of Act cumulative.

13. All powers given to an urban authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

Interpretation.

14. In this Act the expression "urban authority" means an urban sanitary authority under the Public Health Acts, and the expression "district" means an urban sanitary district under those Acts (*i*).

15. [*Application of Act to Ireland.*]

(*d*) See these sections, *ante*.
(*f*) See this section, *ante*, p. 1697.
(*g*) See the sections of the P. H. A., 1875, relating to audit, *ante*, p. 539.
(*i*) See the P. H. A., 1875, s. 6, *ante*, p. 37.

THE FORGED TRANSFERS ACT, 1891.

(54 & 55 VICT. c. 43.) (*k*)

An Act for preserving Purchasers of Stock from Losses by Forged Transfers. [5th August 1891.]

Power to make compensation for losses from forged transfer.

1.—(1) Where a company or local authority (*l*) issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register (*m*) kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney (*n*).

(2) Any company or local authority (*l*) may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred (*o*), to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation.

(3) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority (*l*) may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any

(*k*) This Act has been amended by the Forged Transfers Act, 1892, *post*, p. 1869. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

This Act was occasioned by the decision in *Barton* v. *L. and N. W. Rail. Co.* (1889), 24 Q. B. D. 77, where it was held that a company having registered a forged transfer of stock was bound to replace on their register as holder of the stock the name of the stockholder whose signature to the transfer had been forged, leaving the innocent transferee to bear the loss. The Act is merely enabling and not obligatory. At common law there is no liability towards an innocent transferee, but where such transferee again transfers to a third person for value, there may be a liability by estoppel towards such third person. As to estoppel, see *In re Bahia and San Francisco Rail. Co.* (1868), L. R. 3 Q. B. 584; *Balkis Consolidated Co.* v. *Tomkinson*, [1893] A. C. 396; *Dixon* v. *Kennaway & Co.*, [1900] 1 Ch. 833.

The company or local authority held liable for a loss by a forged transfer may in certain cases have a remedy over against the broker or other person at whose request the forged transfer has been registered. Thus when a broker had innocently induced the Bank of England to transfer consols to a purchaser upon a power of attorney the stockholder's signature to which turned out to have been forged, it was held that he had impliedly warranted that he had the stockholder's authority, and that he was consequently liable to indemnify the bank against the claim of the stockholder for restoration (*Starkey* v. *Bank of England*, [1903] A. C. 114). So also where bankers in good faith sent to a corporation a forged transfer of corporation stock with a request to register the stock in the name of the transferees, it was held that the bankers were bound to indemnify the corporation against the liability to the stockholder, whose name had been forged (*Sheffield Corporation* v. *Barclay & Co.*, [1905] A. C. 392; 60 J. P. 385; see also *Bank of England* v. *Cutler*, [1908] 2 K. B. 208).

(*l*) The expression "local authority" is defined by s. 2, *post.*

(*m*) Local authorities keep registers of mortgages under s. 237 of the P. H. A., 1875, *ante*, p. 533. They may keep a register of nominal securities under s. 23 of the Local Loans Act, 1875, *ante*, p. 1602. But this Act will apply also to shares, stock, or securities transferable by an instrument in writing or by an entry in the books of the local authority.

(*n*) "Whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid" (see the Forged Transfers Act, 1892, s. 2, *post*, p. 1869).

(*o*) "With a minimum charge equal to that for twenty-five pounds" (see the Forged Transfers Act, 1892, s. 3, *post*, p. 1869).

expenses incurred by a local authority in making compensation, or in the repayment of, or the payment of interest on, or otherwise in connexion with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

(4) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

(5) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

Definitions.

2. For the purposes of this Act—

"Company."

The expression "company" shall mean any company incorporated by or in pursuance of any Act of Parliament, or by royal charter.

"Local authority."

The expression "local authority" shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate, the proceeds of which are applicable to public local purposes (*p*).

Application to industrial societies, etc.

3. This Act shall apply to any industrial, provident, friendly, benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company.

Application to harbour and conservancy authorities

4.—(1) This Act shall apply to any harbour authority or conservancy authority as if the authority were a company.

(2) For the purposes of this Act the expression "harbour authority" includes all persons, being proprietors of, or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company.

(3) For the purposes of this Act the expression "conservancy authority" includes all persons entrusted with the duty or invested with the power of conserving, maintaining or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.

5. [*Application to colonial stock.*]

Short title.

6. This Act may be cited as "The Forged Transfers Act, 1891."

THE SCHOOLS FOR SCIENCE AND ART ACT, 1891.

(54 & 55 VICT. c. 61.)

An Act to facilitate the Transfer of Schools for Science and Art to Local Authorities. [5th August 1891.]

Transfer of school for science and art or literary or scientific institution to

1.—(1) The managers of any school for science and art, or for science or for art, or of any institution to which the Literary and Scientific Institutions Act, 1854 (*q*), applies, may make an arrangement with any local authority

(*p*) This definition will include all sanitary authorities, urban and rural.

(*q*) That Act applies to institutions established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or

within the meaning of the Technical Instruction Act, 1889 (*r*), for transferring the school or institution to that authority, and the local authority may assent to any such arrangement and give effect thereto, subject to the provisions of that Act. local authority. 17 & 18 Vict. c. 112. 52 & 53 Vict. c. 76.

(2) The provisions of section twenty-three of the Elementary Education Act, 1870, with respect to arrangements for the transfer of schools shall apply in the case of arrangements for the transfer of schools or institutions in pursuance of this section, with this modification, that for the purposes of transfers to a local authority references to the school board shall be construed as references to the local authority and references to the Education Department as references to the Department of Science and Art, and references to a school shall, in the case of an institution not being a school, be construed as references to the institution (*s*). 33 & 34 Vict. c. 75.

(3) In this section the expression "managers" includes all persons who have the management of any school or institution, whether the legal interest in the site and buildings of the school or institution is or is not vested in them.

2. This Act may be cited as "The Schools for Science and Art Act, 1891." Short title.

THE HIGHWAYS AND BRIDGES ACT, 1891.

(54 & 55 VICT. c. 63.) (*t*)

An Act to confer further powers on County Councils and other Authorities with respect to Main Roads and other Highways and Bridges.

[5th August 1891.]

1. This Act may be cited as "The Highways and Bridges Act, 1891." Short title.

2. This Act shall not apply to Scotland or Ireland or the county of London. Extent of Act.

3. The council of any administrative county (*u*), and any highway authority or authorities (*x*), and the council of any adjoining county, may from time Agreement between highway authorities

maintenance of libraries, reading rooms for general use or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

(*r*) This Act is now repealed by the Education Act, 1902, and the reference must now be construed as a reference to the provisions of Part II. of the Education Act, 1902, and the provisions of that Act apply with respect to any school, college, or hostel established and to any obligation incurred under the Technical Instruction Acts, 1889 and 1891, as if the school, college, or hostel had been established or the obligation incurred under Part II. of that Act. See the Education Act, 1902, Schedule III. (11). The local education authority referred to in Part II. of that Act includes the council of a county borough, but not any other kind of sanitary authority.

(*s*) Under the section here applied the consent of the managers by resolution and of the annual subscribers at a special meeting must be given to the transfer. Under s. 2 of the Board of Education Act, 1899, the Board of Education have taken the place of the Education Department (including the Department of Science and Art), and will hear and decide any objections to the transfer. Reference should be made to the section, which is not here set out because of its length.

(*t*) As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*u*) See the definition, *ante*, p. 782.

(*x*) The expression "highway authority" includes an urban sanitary authority (see *ante*, p. 251); and a rural sanitary authority. See s. 25 of the L. G. A., 1894, *ante*, p. 1003. All agreements undert his section should be under seal. See generally as to contracts by local authorities the notes to s. 174 of the P. H. A., 1875, *ante*, p. 396.

Where a surveyor of highways for a parish acting under this section entered into an agreement with a county council by which he contracted for himself and his successors as highway authority of the parish to contribute towards the building of a bridge a certain

for improvement of roads and bridges.

to time make and carry into effect agreements with each other for or in relation to the construction, reconstruction, alteration or improvement, or the freeing from tolls, of any main road or other highway, or of any bridge (including the approaches thereto), wholly or partly situate within the jurisdiction of any one or more of the party or parties to the agreement (*y*).

All expenses incurred by any such county council or highway authority, in pursuance of this section, shall be defrayed as part of the expenses incurred in relation to the maintenance, repair, improvement, or enlargement of bridges, main roads, or other highways by such council or highway authority (*z*), in such proportions as shall be determined by any such agreement as aforesaid, and any powers of borrowing, applicable to the raising of any fund for the payment of any such expenses as aforesaid, shall be applicable accordingly:

Provided that if a highway board (*a*) think it just that any parish or parishes specially benefited by any construction, reconstruction, alteration, or improvement under this section should bear the expense thereof, or any part of such expense, they may, with the approval of the county council of the county within which their highway district is situate, and with the assent of the inhabitants of such parish or parishes in vestry assembled, charge such expense, or such part thereof as they may think just, exclusively on such parish or parishes.

Power to reduce main road to status of ordinary highway. 41 & 42 Vict. c. 77.

4. Section sixteen of the Highways and Locomotives Amendment Act, 1878, shall apply to any part of a main road in any county, and so much of such section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, is hereby repealed, but no such order shall be made in respect of any main road within a municipal borough without the assent of the council of the said borough having been first obtained (*b*).

5. [*Contracts for supply of road material not to disqualify for election to county council.*]

Construction of Act. 51 & 52 Vict. c. 41.

6. Words and expressions to which meanings are assigned by the Local Government Act, 1888, have in this Act the same respective meanings, and in this Act the word "highway" includes any public bridle path or footway (*c*).

sum payable by two instalments, the second of which was to be payable after the expiration of his year of office, it was held that he had power to make such a contract under this section (*Hertfordshire C. C.* v. *Barnet R. D. C.*, [1902] 2 K. B. 48; 66 J. P. 531).

(*y*) This provision will enable an urban authority to make an agreement for the making or improvement of a road outside their district if they think fit.

(*z*) In urban districts the expenses will be defrayed out of the general district rate or the highway rate as determined by s. 216 of the P. H. A., 1875, *ante*, p. 494.

(*a*) This power is now exercisable by rural district councils who have succeeded highway boards in pursuance of s. 25 of the L. G. A., 1894. A rural district council who succeeded surveyors of highways are without such a power, but they may apply to the L. G. B. for an order under s. 49 of the P. H. A., 1890 (if that section is in force in the district), declaring the cost of an improvement to be special expenses, chargeable to a particular contributory place or places. See notes to the section, and to ss. 25 and 29 of the L. G. A., 1894, *ante*, pp. 1003, 1011.

(*b*) See this section, *ante*, p. 1675.

(*c*) See the interpretation section, *ante*, p. 782. The latter part of this section was quite unnecessary, for a public bridle path or footway is as much a highway as a carriage road. See *R.* v *Salop* (1810) 13 East, 97.

THE MARKETS AND FAIRS (WEIGHING OF CATTLE) ACT, 1891.

(54 & 55 VICT. c. 70). (*d*)

An Act to amend the Markets and Fairs (Weighing of Cattle) Act, 1887.
[5th August 1891.]

Whereas it is expedient to amend the Markets and Fairs (Weighing of Cattle) Act, 1887 (*hereinafter referred to as the principal Act*) : 50 & 51 Vict. c. 27.

1. *As from the passing of this Act* the powers under section nine of the principal Act (*e*) of the Local Government Board as to England and Wales . . . shall be transferred to and vest in the Board of Agriculture (*f*). . . . Transfer of powers under 50 & 51 Vict. c. 27, s. 9.

2.—(1) The market authority of every maket and fair to which the principal Act for the time being applies (*g*), shall, unless exempted (*h*) by order of the Board of Agriculture from the requirements of this section, provide and maintain to the satisfaction of the Board sufficient and suitable accommodation for weighing cattle (*i*). Amendment of 50 & 51 Vict. c. 27, s. 4, as to accommodation for weighing cattle.

(2) Default in complying with the requirements of this section shall be deemed default in complying with the requirements of section four of the principal Act (*k*).

3.—(1) The market authority of every market and fair held in any of the places mentioned in the schedule to this Act shall send to the Board of Agriculture returns, at such intervals, and in such form and with such particulars as the Board of Agriculture by order prescribe, showing, so far as the market authority can ascertain the same, the number of cattle entering and the number and weight of cattle weighed at the market or fair, and the price of the cattle sold thereat. Such market authority may, for the purpose of making a prescribed return, cause any cattle which have been sold at the market to be weighed without fee. Statistics as to weight and sale of cattle.

(2) The Board of Agriculture shall publish the returns so sent, or abstracts thereof, or extracts therefrom, in such manner as they think most expedient for the information of the public.

(*d*) This Act amends the Markets and Fairs (Weighing of Cattle) Act, 1887, *ante*, p. 1797. Sections, or words, relating to Scotland or Ireland only are omitted. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894. Italicised words repealed by S. L. R. A., 1908, except where otherwise stated.

(*e*) The powers here referred to are the powers to exempt certain markets and fairs from the provisions of the Act. See the section, *ante*, p. 1800.

(*f*) Now called the Board of Agriculture and Fisheries. See 3 Edw. 7, c. 31, s. 1.

(*g*) See s. 2 of the principal Act, *ante*, p. 1798, as to the market authority and the markets to which the Act applies.

(*h*) See s. 9 of the principal Act, *ante*, p. 1800.

(*i*) In determining the sufficiency and suitability of the accommodation for weighing cattle, the Board of Agriculture will have regard to the following, amongst other considerations, namely—(a) the convenience of the situation of the weighing machine to buyers and sellers; (b) the supply of proper pens for keeping cattle together, both on entering and on leaving the machine; (c) the size of the machine and its capacity for weighing at one and the same time, if required, a sufficient number of cattle, including store as well as fat stock, so as not to unduly delay the business of the market, fair, or auction. In cases where it is proposed to set up new weighing machines, it is desirable to communicate beforehand with the Board as to the sufficiency of the proposed accommodation (Circular Letter of the Board of Agriculture, dated November 25th, 1891).

(*k*) Under s. 4 of the principal Act, *ante*, p. 1798, the only result of default was to make it illegal to take tolls for cattle, and to render any demand of tolls an offence punishable by fine. Under the provision in the text default in providing weighing accommodation will apparently render the market authority liable to a fine whether they demand or receive tolls or not.

(3) If a market authority wilfully makes default in complying with the requirements of this section, it shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds, or in case of a continuing offence to a fine not exceeding ten pounds for every day during which the offence continues.

(4) In any person makes any *false or* (*l*) fraudulent statement in any return made in pursuance of this section he shall be guilty of a misdemeanor.

(5) The Board of Agriculture may from time to time vary or add to the list of places in the schedule to this Act (*m*).

Application of Act to auction marts.

4.—(1) An auctioneer shall not, unless exempted by order of the Board of Agriculture from the requirements of this section, sell cattle at any mart where cattle are habitually or periodically sold, unless there are provided at that mart similar facilities for weighing cattle as are required by the principal Act and this Act in the case of cattle sold at a market or fair to which the principal Act applies (*n*).

(2) Every auctioneer who in any place from which returns are required to be made under this Act sells cattle at any such mart as aforesaid shall, unless exempted as aforesaid, make the like returns to the Board of Agriculture with respect to cattle entering, weighed, and sold at that mart as are required by this Act to be made by a market authority, and shall be subject to the like penalty for making any false or fraudulent statement in any such return.

(3) If any such auctioneer makes default in complying with the requirements of this section, the auctioneer, or, if he is in the employment of any person, the person by whom he is employed, shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds, or in case of a continuing offence to a fine not exceeding ten pounds for every day during which the offences continues.

(4) [*Commencement of section, January* 1, 1892.]

5. [*Application to Ireland.*]

Construction and short title.

6. This Act shall be construed as one with the principal Act, and may be cited as "The Markets and Fairs (Weighing of Cattle) Act, 1891," and the principal Act and this Act may be cited together as the Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.

THE MORTMAIN AND CHARITABLE USES ACT, 1891.

(54 & 55 VICT. c. 73.) (*o*)

An Act to amend the Mortmain and Charitable Uses Act, 1888, *and the Law relating to Mortmain and Charitable Uses.* [5th August 1891.]

Short title.

1. This Act may be cited as "The Mortmain and Charitable Uses Act, 1891."

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

(*l*) Repealed by the Perjury Act, 1911.

(*m*) By the Markets and Fairs (Weighing of Cattle) Returns Order of 1905 (Stat. R. & O. 1905, p. 199) the Board of Agriculture and Fisheries have so altered the schedule that it is practically superseded, and is therefore omitted.

(*n*) See *Knott* v. *Stride* (1913), 77 J. P. 222; 108 L. T. 181, the facts of which are set out, *ante*, p. 1799.

(*o*) This Act amends the Mortmain and Charitable Uses Act, 1888, *ante*, p. 1830. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

3. "Land" in the Mortmain and Charitable Uses Act, 1888, and in this Act, shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land; *and the definition of land contained in the Mortmain and Charitable Uses Act*, 1888, *is hereby repealed* (*p*). Definition of "land." 51 & 52 Vict. c. 42.

4. In this Act the word "assurance" shall have the same meaning as in the Mortmain and Charitable Uses Act, 1898. Meaning of "assurance."

5. Land may be assured by will to or for the benefit of any charitable use (*q*), but, except as hereinafter provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at chambers, or by the Charity Commissioners. Land assured by will for a charitable purpose to be sold.

6. So soon as the time limited for the sale of any lands under any such assurance shall have expired without completion of the sale of the land, the land unsold shall vest forthwith in the official trustee of charity lands, and the Charity Commissioners shall take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being thereof, and for this purpose the said Commissioners may make any order under their seal directing such trustees to proceed with the sale or completion of the sale of the said land or removing such trustees and appointing others, and may provide by any such order for the payment of the proceeds of sale to the official trustees of charitable funds in trust for the charity, and for the payment of the costs and expenses incurred by the said administering trustees in or connected with such sale, and every such order shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Act, 1853, and the Acts amending the same, respectively, to any orders of the said Commissioners made thereunder. Land after expiration of time limited for sale to be sold by order of Charity Commissioners. 16 & 17 Vict. c. 137.

7. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable uses shall, except as hereinafter provided, be held to or for the benefit of the charitable uses as though there had been no such direction to lay it out in the purchase of land (*r*). Personal estate by will directed to be laid out in land not to be so laid out.

(*p*) This supersedes the definition of "land" in s. 10 of the principal Act, *ante*, p. 1835. Italicised words repealed as spent by S. L. R. A., 1908. With regard to money secured on land, it may be noted that corporation debenture stock charged on the revenue of all landed and other property of the corporation was held not to be an interest in land under 9 Geo. 2, c. 36, s. 3 (*In re Picard, Elmsley* v. *Mitchell*, [1894] 2 Ch. 88). See also *In re Crossley, Birrell* v. *Greenhough*, [1897] 1 Ch. 928; 61 J. P. 390.

Where real estate has been devised to trustees on trust for sale, and the proceeds directed to be paid to a charity, the charity takes no benefit in anything but personal estate arising from land (*Re Sidebottom, Beeley* v. *Waterhouse*, [1902] 2 Ch. 389). See also *Re Wilkinson, Esam* v. *Att.-Gen.*, [1902] 1 Ch. 841; and *Re Ryland, Roper* v. *Ryland*, [1903] 1 Ch. 467.

(*q*) A testator, who died after the passing of this Act, by his will made before the passing of this Act, gave to a charity such part of the residue as may by law be given for charitable purposes, with a separate gift of the remainder to A.:—*Held*, that the Act applied, and in the absence of a contrary intention the whole of the residue, realty as well as personalty, went to the charity (*In re Bridger, Brompton Hospital Governors* v. *Lewis*, [1894] 1 Ch. 297).

(*r*) Where a testator devised and bequeathed residuary estate to purchase land for the erection of model dwellings for the poor, it was held that the effect of striking out the direction to purchase land was not to put an end to the whole charitable trust, and that the residuary gift was valid (*Re Sutton, Lewis* v. *Sutton*, [1901] 2 Ch. 640; 66 J. P. 39).

A gift by a testatrix of "any little money left" for the repair of a churchyard is a valid bequest, and is not limited to the sum of £500 by the Gifts for Churches Act, 1803 (*Re Douglas, Douglas* v. *Simpson*, [1905] 1 Ch. 279).

Power to retain land in certain cases.

8. It shall be lawful for the High Court, or any judge thereof sitting at chambers, or for the Charity Commissioners, if satisfied that land assured by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, by order to sanction the retention or acquisition, as the case may be, of such land (*s*).

Application of Act.

9. This Act shall only apply to the will of a testator dying after the passing of this Act.

Saving.

10. Nothing in this Act contained shall limit or affect the exemptions contained in Part III. of the Mortmain and Charitable Uses Act, 1888, or apply to any land or personal estate to be laid out in the purchase of land acquired under any assurance to which such exemptions or any of them apply, or shall exclude or impair any jurisdiction or authority which might otherwise be exercised by a court or judge of competent jurisdiction or by the Charity Commissioners.

THE MORTMAIN AND CHARITABLE USES ACT AMENDMENT ACT, 1892.

(55 & 56 VICT. C. 11.) (*t*)

An Act to amend the Mortmain and Charitable Uses Act, 1888.
[20th June 1892.]

Extension of 51 & 52 Vict. c. 42, s. 6.

1. Section six of the Mortmain and Charitable Uses Act, 1888, except so much of sub-section (2) thereof as provides that an assurance by deed, made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, shall apply to any assurance by deed of land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land (*u*).

Definitions.

2. For the purpose of this Act " local authority " means any county council, council of a municipal borough, sanitary authority, or any body having power to make a rate for public purposes or by the issue of any precept, certificate, or other document to require payment from some authority or officer of money which may render necessary the making of any such rate ; and " assurance " has the same meaning as in the Mortmain and Charitable Uses Act, 1888.

Extent of Act.

3. This Act shall not apply to Scotland or Ireland.

Short title.

4. This Act may be cited as " The Mortmain and Charitable Uses Act Amendment Act, 1892."

(*s*) On a summons under this section to sanction retention of land for the purposes of a charity after the expiration of a year from the testator's death, the official trustee and not the commissioners should be made a defendant (*Re Church Patronage Trust, Laurie* v. *Att.-Gen.*, [1904] 1 Ch. 41 ; 68 J. P. 64). Affirmed on other points, [1904] 2 Ch. 643.

(*t*) This Act amends 51 & 52 Vict. c. 42, *ante*, p. 1830. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*u*) See the section here referred to, *ante*, p. 1833.

THE TECHNICAL AND INDUSTRIAL INSTITUTIONS ACT, 1892.

(55 & 56 VICT. c. 29.) (*x*)

An Act to facilitate the Acquisition and Holding of Land by Institutions for Promoting Technical and Industrial Instruction and Training.

[27th June 1892.]

1. This Act may be cited as "The Technical and Industrial Institutions Act, 1892." Short title.

2. This Act applies to every institution established, whether before or after the passing of this Act, for effecting all or any of the following purposes, that is to say: Definition of institution.

(i.) To give technical instruction within the meaning of the Technical Instruction Act, 1889 (*y*); 52 & 53 Vict. c. 76.

(ii.) To provide the training, mental or physical, necessary for the above purpose;

(iii.) In connection with the purposes before mentioned, to provide workshops, tools, scientific apparatus and plant of all kinds, libraries, reading rooms, halls for lectures, exhibitions, and meetings, gymnasiums, and swimming baths, and also general facilities for mental and physical training, recreation, and amusement, and also all necessary and proper accommodation for persons frequenting the institutions;

and every such institution is in this Act referred to as the institution.

3.—(1) The governing body of the institution may be any body corporate, council, public authority, local authority, commissioners, directors, committee, trustees, or other body of persons, corporate or unincorporate, willing to undertake, or elected or appointed for the purpose of undertaking, or having, the government and management of the institution (*z*). Governing body.

(2) The governing body may make byelaws and rules for the management and conduct of the institution (*a*).

4. The Lands Clauses Consolidation Act, 1845 (*b*), and the Lands Clauses Consolidation Acts Amendment Act, 1860 (*c*) (except the provisions of those Acts relating to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by promoters of the undertaking, and with respect to determining the amount of purchase money by valuation of surveyors), are hereby incorporated in this Act. Incorporation of 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106.

5. The governing body of the institution may by agreement enter on, take, and use any land required by them for the purposes of the institution, and such land may be conveyed either to the governing body or to trustees for the governing body. Power to take land by agreement.

6.—(1) A conveyance of land may be made to the governing body of the institution or to trustees for the governing body either for valuable con- Conveyance may be by way of sale, exchange, or gift.

(*x*) As to the omission of the clause of enactment, see note (*o*), *ante*, p. 1864.

(*y*) This must now be construed as a reference to Part II. of the Education Act, 1902. See Sched. III. (ii) of that Act.

(*z*) Any sanitary authority may be a governing body within the meaning of this definition.

(*a*) Such byelaws and rules if made by virtue of this Act will not require confirmation by any central authority.

(*b*) *Ante*, p. 1321.

(*c*) *Ante*, p. 1484.

sideration in money, or in consideration of a rentcharge, or by way of exchange for other land, or, subject as in this Act provided, by way of free gift, and without any consideration (*d*).

(2) A conveyance under this Act by a person having an equitable estate shall operate to pass any bare outstanding legal estate vested in a trustee.

Conveyances by limited owners.

7.—(1) A conveyance under this Act by a person not entitled to dispose absolutely for his own benefit of the land proposed to be conveyed (other than a conveyance on a sale or exchange for the best consideration in money, or by way of rentcharge, or in land to be reasonably obtained) shall be subject to the following restrictions and provisions:

(a) It shall not in itself, or in addition to any land conveyed under this Act by the same person, comprise more than two acres in the whole in any one county, city, or borough:

(b) It shall be made either with the consent of the person, if any, entitled to the next estate of freehold in remainder for the time being, or with the approval of the High Court of Justice.

(2) Every application to the court for an order approving a conveyance under this Act shall be by summons in chambers, and shall, subject to the Acts regulating the court, be assigned to the Chancery Division.

(3) On any such application the court may direct notice to be served on such persons, if any, as it thinks fit.

(4) On any such application the court shall have regard to the circumstances of the settled estate, the wants of the neighbourhood, and the interests of the persons entitled in remainder, and the court, if it thinks fit under all the circumstances of the case, may make an order approving the proposed conveyance. Such order, if the court thinks fit, may be made on such terms and conditions, if any, as the court thinks proper; but no such order shall be made if the application is opposed by any person entitled in remainder, unless the court is of opinion that the opposition is unreasonable, or the interest of the person opposing so remote that it may properly be disregarded.

Institution to be public.

8. Every institution for which land has been acquired under an exercise of the powers conferred by this Act shall be open generally either to all persons or to all persons within specified limits as to age, qualification, or otherwise, and either without payment or on specified terms as to times of attendance and payment of subscriptions or fees, or otherwise, but so that no preference be given to any person or class of persons within the specified limits.

Site may be sold or exchanged.

9.—(1) Land acquired under the powers of this Act shall not be used otherwise than for the purposes of an institution within the meaning of this Act, but, with the consent of the Charity Commissioners, may be sold or may be exchanged for other land.

(2) The governing body or their trustees may execute conveyances and do all acts necessary to effectuate the sale or exchange.

(3) On a sale, the receipt of the governing body or of the trustees for the governing body shall be sufficient discharge for the purchase money, and such money shall, as soon as convenient, be invested in the purchase of other land.

(4) Land purchased or taken in exchange under this section shall be devoted to the same purposes and be liable to the same incidents as originally were applicable to or affected the land sold or given in exchange.

(5) Money arising by sale may, until reinvested in the purchase of land, be invested in the names of the governing body or of trustees for the governing

(*d*) See *In re Stanley, Stanley* v. *Att.-Gen.* (1910) 26 T. L. R. 365.

body in any manner in which trust money is for the time being by law authorised to be invested; and all dividends and income on investments so made and all the resulting income shall be invested in like manner so as to accumulate in the way of compound interest, and be added to capital until the capital is reinvested in the purchase of land.

10.—(1) Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891 (*e*), as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to conveyances or to assurances by will made under or for the purposes of this Act, but every such conveyance or assurance shall be enrolled as soon as may be in the books of the Charity Commissioners. Parts I. and II. of 51 & 52 Vict. c. 42, and part of 54 & 55 Vict. c. 73, not to apply.

(2) Any corporate body may acquire and shall be entitled to hold and retain land for the purposes of this Act without any licence in mortmain.

11. This Act shall not extend to Scotland. Extent of Act.

THE FORGED TRANSFERS ACT, 1892.

(55 & 56 VICT. c. 36.) (*f*)

An Act to remove doubts as to the meaning of the Forged Transfers Act, 1891.
[27th June 1892.]

1. This Act may be cited as "The Forged Transfers Act, 1892," and this Act and the Forged Transfers Act, 1891, may be cited together as the Forged Transfers Acts, 1891 and 1892. Short title. 54 & 55 Vict. c. 43.

2. *Whereas* (*g*) . . .
The Forged Transfers Act, 1891, shall have effect as if at the end of sub-section one of section one of that Act, there were added the words "whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid." Removal of doubt as to the operation of 54 & 55 Vict. c. 43.

3. Sub-section two of section one of the said Act shall be read as if, after the words "on any one hundred pounds transferred," were inserted the words "with a minimum charge equal to that for twenty-five pounds." Amendment of 54 & 55 Vict. c. 43, s. 1 (2).

4. Where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock, or securities of another company or local authority, the last-mentioned company and authority shall have the same power under the Forged Transfers Act, 1891, and this Act, as the original company or authority would have had if it had continued. Provision where one company takes over shares, &c., of another company.

(*e*) *Ante*, pp. 1833, 1864.

(*f*) This Act amends the Forged Transfers Act, 1891, *ante*, p. 1859. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*g*) The preamble to this section (repealed by the S. L. R. A., 1908), after referring to s. 1 (1) of the Forged Transfers Act, 1891, recited that it was expedient to remove doubts as to the application of that Act to losses and forgeries before its passing.

THE RAILWAY AND CANAL TRAFFIC ACT, 1892.

(55 & 56 VICT. c. 44). (*k*)

An Act to amend the Railway and Canal Traffic Act, 1888.
[27th June 1892.]

51 & 52 Vict. c. 25.

Whereas by section twenty-four of the Railway and Canal Traffic Act, 1888, *it is provided that after the commencement of the session of Parliament next after that in which the report of the Board of Trade with respect to a classification of traffic and schedule of rates and charges has been submitted to Parliament, the Board of Trade may embody in a provisional order such classification and schedule as in the opinion of the Board of Trade ought to be adopted, and procure a Bill to be introduced to confirm the order, and it is expedient to amend this provision :*

Time for application for provisional order.

1. A provisional order in pursuance of sub-section seven of section twenty-four of the Railway and Canal Traffic Act, 1888, may be made, and a Bill to confirm the same may be introduced at any time after hearing the parties as provided in sub-section four of the said section.

Short title.

2. This Act may be cited as " The Railway and Canal Traffic Act, 1892."

THE PUBLIC LIBRARIES ACT, 1892.

(55 & 56 VICT. c. 53.) (*l*)

An Act to consolidate and amend the Law relating to Public Libraries.
[27th June 1892.]

ADOPTION OF ACT AND CONSTITUTION OF LIBRARY AUTHORITY.

Extent and application of Act.

1.—(1) This Act shall extend to every library district for which it is adopted.

(2) For the purposes of this Act and subject to the provisions thereof every urban district (*m*) and every parish in England and Wales which is not within an urban district shall be a library district (*n*).

. . . . .

Limitations on expenditure for purposes of Act.

2.—(1) A rate or addition to a rate shall not be levied for the purposes of this Act for any one financial year (*o*) in any library district to an amount exceeding one penny in the pound (*p*).

(2) This Act may be adopted for any library district (*q*) subject to a condi-

(*k*) This Act amends the Railway and Canal Traffic Act, 1888, s. 24 (7). See the note to that section, *ante*, p. 1819, where the effect of the amendment is stated. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894. Preamble repealed by S. L. R. A., 1908.

(*l*) This Act repeals and consolidates all the previous Acts relating to public libraries, a list of which will be found in the Schedule. As to the omission of the clause of enactment, see preceding note. This Act has been amended by the Public Libraries (Amendment) Act, 1893, and the Public Libraries Act, 1901, *post*. See also the Libraries Offences Act, 1898, *post*, p. 1916.

(*m*) See the definition of an urban district in s. 27, *post*.

(*n*) The next sub-section is repealed by s. 89 of the L. G. A., 1894. See s. 7 of that Act.

(*o*) This means the period of twelve months for which the accounts of the authority are made up. See s. 27, *post*.

(*p*) That is, upon the rateable value of property actually capable of producing and yielding this amount. See *Ex parte Brown, In re Liverpool Corporation* (1862), 31 L. J. M. C. 108 ; 26 J. P. 389. See also s. 18 (1), *post*.

(*q*) See s. 1, and the Public Libraries (Amendment) Act, 1893, ss. 2 and 3, *post*, p. 1881.

tion that the maximum rate or addition to a rate to be levied for the purposes of this Act in the district or in any defined portion of the district in any one financial year shall not exceed one halfpenny or shall not exceed three farthings in the pound, but such limitation if fixed at one halfpenny may be subsequently raised to three farthings, or altogether removed, or where it is for the time being fixed at three farthings may be removed.

Proceedings for adoption of Act.

3. With respect to (*r*)—

(a) the adoption of this Act for any library district; and

(b) the fixing, raising, and removing of any limitation on the maximum rate to be levied for the purposes of this Act; and

(c) the ascertaining of the opinion of the voters (*s*) with respect to any matter for which their consent is required under this Act;

the following provisions shall have effect; that is to say,

(1) Any ten or more voters (*s*) in the library district may address a requisition in writing to the authority hereafter in this section mentioned (*t*) requiring that authority to ascertain the opinion of the voters in the district with respect to the question or questions stated in the requisition: *Provided that where the library district is a municipal borough the requisition may be made by the council of the borough:*

(2) On receipt of the requisition the said authority (*t*) shall proceed to ascertain by means of voting papers (*u*) the opinion of the voters with respect to the said question or questions; but the said authority shall not ascertain the opinion of the voters on any question with respect to the limitation of the rate unless required to do so by the requisition, or with respect to any limitation of the rate other than the limitations specified in this Act:

(3) *The procedure for ascertaining the opinion of the voters* (*u*) *shall be in accordance with the regulations contained in the First Schedule to this Act; and those regulations shall have effect as if they were enacted in the body of this Act:*

(4) Every question so submitted to the voters shall be decided by the majority of answers to that question recorded on the valid voting papers, and where the majority of those answers are in favour of the adoption of this Act the same shall forthwith, on the result of the poll being made public, be deemed to be adopted:

(5) Where the opinion of the voters in any library district is ascertained upon the question as to the adoption of this Act, or upon a question as to the limitation of the rate, no further proceeding shall be taken for ascertaining the opinion of the voters until the expiration of one year at least from the day when the opinion of the voters was last ascertained, that is to say, the day on which the voting papers were collected:

(6) The authority to ascertain the opinion of the voters for the purposes of this section shall be *in a municipal borough the mayor, and in any*

(*r*) There has been no general repeal of this section: the italicised words were repealed by the S. L. R. A., 1908; and as regards urban districts it was repealed by the Public Libraries (Amendment) Act, 1893, s. 2 (2), *post*, p. 1881, and it was repealed by the Public Libraries Act, 1901, *post*, p. 1894, so far as it was inconsistent with that Act. In rural parishes it was apparently superseded for all practical purposes by s. 7 of the L. G. A., 1894. After 1894, therefore, it remained in force only in the metropolis, as applied by ss. 21–23, *post*, until 1901, when ss. 13 and 14 of the Public Libraries Act, 1901, *post*, p. 1987, apparently rendered it altogether inoperative.

(*s*) *I.e.*, the parochial electors. See Public Libraries Act, 1901, s. 9, *post*, p. 1986.

(*t*) See sub-s. (6).

(*u*) In a rural parish the opinion of the parochial electors has been since 1894 ascertained by a poll taken in manner provided by the L. G. A., 1894. See s. 7 (2) of that Act.

other urban district the chairman of the urban authority, and in a parish the overseers (*x*).

Act when adopted to be executed by library authority.

4. This Act when adopted for any library district shall be carried into execution, if the library district is an urban district, by the urban authority and, if it is a parish, by the commissioners appointed under this Act (*y*); and any such authority or commissioners executing this Act are hereinafter referred to as a "library authority."

Constitution of commissioners for executing Act in parish.

5.—(1) Where this Act is adopted for any parish the vestry shall forthwith appoint not less than three nor more than nine voters in the parish to be commissioners for carrying this Act into execution (*z*).

(2) The commissioners shall be a body corporate by the name of "The Commissioners for Public Libraries and Museums for the parish of , in the county of ," and shall have perpetual succession and a common seal, with power to acquire and hold lands for the purposes of this Act, without any licence in mortmain (*a*).

Rotation of commissioners.

6.—(1) The commissioners shall, as soon as conveniently may be after their appointment, divide themselves by agreement, or in default of agreement by ballot, into three classes, one-third or as nearly as may be one-third of them being in each class.

(2) The offices of the first class shall be vacated at the expiration of one year, the offices of the second class at the expiration of two years, and the offices of the third class at the expiration of three years from the time of appointment.

(3) The offices of vacating commissioners shall be filled by an equal number of new commissioners to be appointed by the vestry from among the voters in the parish; and every newly elected commissioner shall hold his office for the term of three years from the date when the office became vacant, and no longer, unless re-elected; but a person, on ceasing to be a commissioner, shall, unless disqualified, be re-eligible.

(4) Any casual vacancy among the commissioners, whether arising by death, resignation, incapacity, or otherwise, shall as soon as may be after the occurrence thereof be filled up by the vestry; but the term of office of a commissioner appointed to fill up a casual vacancy shall expire at the date at which the term of office of the commissioner in whose place he is appointed would have expired (*b*).

Meetings of commissioners.

7. The commissioners shall meet at least once in every month, and at such other times as they shall think fit, at some convenient place; and any one commissioner may summon a special meeting by giving three clear days' notice in writing to each commissioner, specifying therein the purpose for which the meeting is called. Business shall not be transacted at any meeting of the commissioners unless at least two of them are present.

(*x*) In every rural parish the parish meeting have had since 1894, exclusively, the power of adopting this Act. See s. 7 (1) of the L. G. A., 1894.

(*y*) If there is a parish council for the parish, the authority for the execution of the Act is now that council (see the L. G. A., 1894, s. 7 (5), (7); see also s. 53). If there is no parish council, it is still commissioners appointed under this Act, but appointed by the parish meeting under 56 & 57 Vict. c. 73, s. 19 (4), instead of by the vestry. The first thing the library authority has to do is to send notice of the adoption of the Act to the L. G. B. See the Public Libraries Act, 1901, s. 8, *post*, p. 1986.

(*z*) This sub-section only applies in parishes not having a parish council. As to the qualification of commissioners, see now *ibid.*, s. 2.

(*a*) The parish council will be a body corporate, with power to hold lands for the purposes of this Act without a licence in mortmain (see the L. G. A., 1894, s. 3 (9)). As to parishes without a parish council, see *ibid.*, s. 19 (7).

(*b*) This section is now applicable only in parishes not having a parish council.

8. All orders and proceedings of the commissioners shall be entered in books to be kept for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any judicial proceeding.

Proceedings of commissioners to be recorded.

9.—(1) Where this Act is adopted for any two or more neighbouring parishes, the vestries of those parishes may by agreement (*d*) combine for any period in carrying this Act into execution, and the expenses of carrying this Act into execution shall be defrayed by the parishes in such proportions as may be agreed on by the vestries.

Power to vestries of neighbouring parishes to combine (*c*).

(2) The vestry of each of the said parishes shall appoint not more than six commissioners in accordance with the provisions of this Act and the commissioners so appointed for the several parishes shall form one body of commissioners, and shall act accordingly in the execution of this Act (*e*).

10. Where the voters in a parish adjoining or near any library district for which either this Act has been adopted, or the adoption thereof is contemplated, consent to such parish being annexed to the said district, such parish, subject to the consent of the library authority of the said district being also given, shall be annexed to and form part of that district for the purposes of this Act; the vestry of such parish shall appoint not more than six commissioners in accordance with the provisions of this Act, and the commissioners so from time to time appointed shall during their respective terms of office be deemed for all the purposes of this Act to be members of the library authority of the said district.

Power to annex parish to adjoining district.

EXECUTION OF ACT.

11.—(1) The library authority (*f*) of any library district (*g*) for which this Act has been adopted may, subject to the provisions of this Act, provide all or any of the following institutions, namely, public libraries, public museums, schools for science, art galleries, and schools for art, and for that purpose may purchase and hire land, and erect, take down, rebuild, alter, repair, and extend buildings, and fit up, furnish, and supply the same with all requisite furniture, fittings, and conveniences (*h*).

Provision of libraries, museums, and schools of science and art.

(*c*) As to the combination of urban districts, see the Public Libraries (Amendment) Act, 1893, s. 4, *post*, p. 1881.

(*d*) The vestries were not corporate bodies, and the only evidence of an agreement between them would be the resolutions appearing on the minutes, but parish councils are corporate bodies and can enter into formal agreements.

(*e*) See now the L. G. A., 1894, s. 53 (2), as to the compulsory transfer of the powers and duties of any commissioners appointed under this sub-section.

(*f*) See s. 4, *ante*.

(*g*) See s. 1, *ante*.

(*h*) A free library, established by a library authority under this Act, is a building which is the property of a literary or scientific institution within r. VI. of 5 & 6 Vict. c. 35, and is, therefore, exempt from assessment to income tax under Sched. A. (*Manchester Corporation* v. *Macadam*, [1896] A. C. 500; 61 J. P. 100, practically overruling *Andrews* v. *Bristol Corporation* (1890), 61 L. J. Q. B. 715; 56 J. P. 615).

A museum provided under this Act in an urban district may be appropriated under 1 Edw. 7, c. 19, s. 7, *post*, p. 1986, for the purposes of the Museums and Gymnasiums Act, 1891, *ante*, p. 1855, thus relieving the library rate from the expense of maintaining it.

The council of a metropolitan borough in which this Act was in force in the course of demolishing some old premises, for the purpose of erecting a free library, made a hole in the wall of an adjoining owner's premises and did damage. In an action for damages brought by the adjoining owner it was held that the Public Authorities Protection Act did not apply (*Walsh* v. *Southwark Borough Council* (1908), 72 J. P. 71).

(2) Where any of the institutions mentioned in this section has been established either before or after the passing of this Act by any library authority under this Act or the Acts hereby repealed, that authority may establish in connexion therewith any other of the said institutions without further proceedings being taken with respect to the adoption of this Act.

(3) No charge shall be made for admission to a library or museum provided under this Act for any library district, or, in the case of a lending library, for the use thereof by the inhabitants of the district; but the library authority, if they think fit, may grant the use of a lending library to persons not being inhabitants of the district, either gratuitously or for payment.

Provision as to acquisition and disposal of land.

12.—(1) For the purpose of the purchase of land under this Act by a library authority the Lands Clauses Acts (*i*), with the exception of the provisions relating to the purchase of land otherwise than by agreement, shall be incorporated with this Act.

(2) The library authority of any library district which is an urban district may with the sanction of the Local Government Board appropriate for the purposes of this Act any land which is vested in that authority (*k*).

(3) A library authority may with the sanction of the Local Government Board sell any land vested in them for the purposes of this Act, or exchange any such land for other land better adapted for those purposes, and the money arising from the sale or received by way of equality of exchange shall be applied in or towards the purchase of other land better adapted for the said purposes, or may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board.

(4) A library authority may let a house or building, or any part thereof, or any land vested in them for the purposes of the Act, which is not at the time of such letting required for those purposes, and shall apply the rents and profits thereof for the purposes of this Act.

Power to grant charity land for purposes of this Act.

13.—(1) Any person holding land for ecclesiastical, parochial, or charitable purposes may, subject as hereinafter provided, grant, or convey, by way of gift, sale, or exchange, for any of the purposes of this Act any quantity of such land, not exceeding in any one case one acre, in any manner vested in such person.

(2) Provided that—

(a) ecclesiastical property shall not be granted or conveyed for those purposes without the consent of the Ecclesiastical Commissioners; and

(b) parochial property shall not be so granted or conveyed save by the board of guardians of the poor law union comprising the parish to which the property belongs, or without the consent of the Local Government Board; and

(c) other charitable property shall not be so granted or conveyed without the consent of the Charity Commissioners; and

(d) the land taken in exchange or the money received for such sale shall be held on the same trusts as the land exchanged or sold; and

(e) land situated in the administrative county of London, or in any urban district containing according to the last published census for the time being over twenty thousand inhabitants, which is

(*i*) 8 & 9 Vict. c. 18, *ante*, p. 1321; 23 & 24 Vict. c. 106, *ante*, p. 1484; 46 & 47 Vict. c. 15, *ante*, p. 1763. The exception of the provisions relating to the purchase of land otherwise than by agreement, leaves the authority without power to give compensation for injuriously affecting lands. See *Ferrar* v. *London Commissioners of Sewers* (1869), L. R. 4 Ex. 227. As to disregard of restrictive covenants, see *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437; 60 J. P. 182.

(*k*) And see *Att.-Gen.* v. *Corporation of Sunderland*, *ante*, p. 370.

held on trusts to be preserved as an open space, or on trusts which prohibit building thereon, shall not be granted or conveyed for the purposes of this Act.

(3) Any land granted or conveyed to any library authority under this section may be held by that authority without any licence in mortmain.

14.—All land appropriated, purchased, or rented, and all other real and personal property presented to or purchased or acquired for any library, museum, art gallery, or school under this Act shall be vested in the library authority.

Vesting of property in library authority.

15.—(1) The general management, regulation, and control (*l*) of every library, museum, art gallery, and school provided under this Act shall be vested in and exercised by the library authority, and that authority may provide therein books, newspapers, maps, and specimens of art and science, and cause the same to be bound and repaired when necessary.

Management of libraries, &c. by library authority or committee.

(2) The library authority may also appoint salaried officers and servants, and dismiss them, and make regulations for the safety and use of every library, museum, gallery, and school under their control, and for the admission of the public thereto.

(3) Provided that a library authority being an urban authority may if they think fit appoint a committee and delegate to it all or any of their powers and duties under this section, and the said committee shall to the extent of such delegation be deemed to be the library authority. Persons appointed to be members of the committee need not be members of the urban authority (*m*).

16.—(1) (*n*).

(2) The library authority of any library district may with the consent of the voters (*o*) in the district and of the Charity Commissioners make the like agreement with the governing body of any library established or maintained out of the funds subject to the jurisdiction of the Charity Commissioners, and situate in or near the library district, and, in case of inability, objection, or failure on the part of the governing body to enter into such agreement, the Charity Commissioners may, if they think fit, become party to the agreement on behalf of the governing body.

Power to library authorities to make agreements for use of library.

(3) This section shall apply, with the necessary modifications, to a museum, school for science, art gallery, or school for art in like manner as to a library.

17. Where a library authority accept a grant out of money provided by Parliament from the Department of Science and Art towards the purchase of the site, or the erection, enlargement, or repair, of any school for science and art, or school for science, or school for art, or of the residence of a teacher in any such school, or towards the furnishing of any such school, that authority may accept the grant upon the conditions prescribed by the Department of Science and Art, and may execute any instruments required by that Department for carrying into effect those conditions, and upon payment of the grant shall be bound by such conditions and instruments, and have power and be bound to fulfil and observe the same.

Power to library authority to accept parliamentary grant.

(*l*) As to offences, see the Libraries Offences Act, 1898, *post*, p. 1916. As to making byelaws, see the Public Libraries Act, 1901, s. 3, *post*, p. 1985.

(*m*) No qualification is prescribed for these persons. Delegation does not relieve the urban authority from their liability for negligence on the part of those having control of the library (*Bungary* v. *Wellingborough U. D. C.* (1903), 68 J. P. 307 *n*).

(*n*) This sub-section is repealed by 1 Edw. 7, c. 19, s. 14, and Sched., *post*, p. 1987, and s. 5 of that Act now makes other provision for library authorities to share the cost of a library by agreement.

(*o*) In an urban district no consent of the voters is now required (Public Libraries (Amendment) Act, 1893, s. 2, *post*, p. 1881).

FINANCIAL PROVISIONS.

Expenses of library authority, how defrayed.

18.—(1) The expenses incurred (*p*) in a library district in and incidental to the execution of this Act, including all expenses in connexion with ascertaining the opinion of the voters in the district, may be defrayed,—

(a) where the library district is a municipal borough, out of the borough fund or borough rate, or a separate rate to be made, assessed, and levied in like manner as the borough rate; and

(b) where the library district is an urban district other than a borough, out of the rate applicable to the general expenses incurred in the execution of the Public Health Acts (*q*), or a separate rate to be made, assessed, and levied in like manner as the rate so applicable; and

(c) where the library district is a parish, out of a rate to be raised with and as part of the poor rate, subject, however, to this qualification, that every person assessed to the poor rate in the said parish in respect of lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be entitled to an allowance of two-thirds of the sum assessed upon him in respect of those lands for the purposes of this Act (*r*).

. . . . . .

(3) Where a parish or a part of a parish is annexed in pursuance of this Act to any library district, so much of the said expenses as is chargeable to such parish or part shall be defrayed in like manner as if such parish or part were a separate library district (*s*).

Borrowing by library authority.

19.—(1) Every library authority, with the sanction of the Local Government Board, and in the case of a library authority being commissioners appointed for a parish, with the sanction also of the vestry (*t*) of such parish, may borrow money for the purposes of this Act on the security of any fund or rate applicable for those purposes.

(*p*) The L. G. B. have stated that in their view if a library authority levy during one year the full rate which they are authorised to levy for library purposes, but do not expend the whole amount, they may, under the Public Libraries Act, 1892, carry forward the balance to the next year's library account and spend it in that year for library purposes, together with the sum which they can raise by another full rate. The Board do not consider, however, that a district council could properly require money to be paid to them over and above their actual expenses with the express object of accumulating it for purposes to be carried out at some future time.

(*q*) This will be either the general district rate or the improvement rate. See the P. H. A., 1875, s. 207, *ante*, p. 468.

(*r*) Consequently where the library district is a parish the Agricultural Rates Act, 1896, does not apply. Note that orchards and allotments are not included in the exemption provided by this sub-section. Where by mistake a similar abatement was allowed for a period of three years on lands not used as arable, etc., it was held that the amounts of such abatements were recoverable as arrears under 17 Geo. 2, c. 38, ss. 7, 11; *R.* v. *Blenkinsop*, [1892] 1 Q. B. 43; 56 J. P. 246. See also the note to s. 2 (1), *ante*, p. 1870. The incidence of charge of this rate is not altered by the L. G. A., 1894. See s. 7 (6) of that Act. But the proportion of the poor rate levied for the purposes of this Act must be stated in the demand note (*ib.*, s. 11 (5)).

Sub-section (2) of this section is repealed by 1 Edw. 7, c. 19, s. 14, and Sched., *post*, p. 1987, and by s. 6 of that Act the sanction of the parish meeting is no longer required annually for raising the money for library expenses, subject however to the L. G. A., 1894, s. 11.

(*s*) The remainder of this sub-section is repealed by 1 Edw. 7, c. 19, s. 14, and Sched., *post*, p. 1987.

(*t*) See note (*t*), *supra*, as to substituting the consent of the parish meeting. By s. 12 (1) (b) of the L. G. A., 1894, a parish council may borrow for the purposes of this Act, but, by sub-s. (3) of the same section, not otherwise than in accordance with that Act, and the charge for such purpose shall ultimately be on the rate applicable to the purposes of this Act.

(2) Sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine, both inclusive, of the Public Health Act, 1875 (*u*), relating to borrowing by a local authority shall apply, with the necessary modifications, to all money borrowed by any library authority for the purposes of this Act, as if the library authority were an urban authority, and as if references to this Act were substituted in those sections and in the forms therein mentioned for references to the Public Health Act, 1875. 38 & 39 Vict. c. 55.

(3) The Public Works Loan Commissioners may in manner provided by the Public Works Loans Act, 1875 (*x*), lend any money which may be borrowed by a library authority for the purposes of this Act. 38 & 39 Vict. c. 89.

Accounts and audit.

20.—(1) Separate accounts shall be kept of the receipts and expenditure under this Act of every library authority and their officers, and those accounts shall be audited in like manner and with the like incidents and consequences, in the case of a library authority being an urban authority, and of their officers, as the accounts of the receipts and expenditure of that authority and their officers under the Public Health Acts (*y*).

(2) The accounts of the receipts and expenditure of a library authority being commissioners appointed under this Act, and of their officers, shall be audited yearly by a district auditor in like manner and with the like incidents and consequences as in the case of an audit under the Acts relating to the relief of the poor, and those commissioners shall be a local authority within the meaning of the District Auditors Act, 1879 (*z*). 42 & 43 Vict. c. 6.

(3) The accounts of the receipts and expenditure under this Act of any library authority other than the council of a municipal borough shall be open at all reasonable times to the inspection, free of charge, of any ratepayer in the library district, and any such ratepayer may without charge make copies of and extracts from those accounts ; and if any library authority or any person being a member thereof or employed by them and having the custody of the accounts fails to allow the accounts to be inspected, or copies or extracts to be made, as required by this section, such authority or person shall for each offence be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding five pounds.

PROVISIONS AFFECTING LONDON ONLY.

Application of Act to city of London.

21.—(1) The city of London shall be a library district, and on this Act being adopted for the city, the common council shall be the library authority.

(2) The opinion of the voters in the city of London with respect to any question under this Act shall be ascertained by the mayor on the requisition of the common council.

(3) The expenses incurred in the city of London in and incidental to the execution of this Act, including all expenses in connexion with ascertaining the opinion of the voters, shall be defrayed out of the consolidated rate levied by the commissioners of sewers, or a separate rate to be made, assessed, and levied by those commissioners in like manner as the consolidated rate.

(4) So much of this Act as limits the rate or addition to a rate to be levied in any library district for any one financial year to one penny in the pound shall not extend to the city of London.

(*u*) See these sections, *ante*, pp. 519—533.
(*x*) See that Act, *ante*, p. 1608.
(*y*) See the P. H. A., 1875, ss. 246, 247, *ante*, p. 540.
(*z*) The form of financial statement to be submitted to the district auditor by the commissioners was prescribed by Order of the L. G. B., dated November 26th, 1892 (Stat. R. & O., p. 243). See the District Auditors Act, 1879, *ante*, p. 1688.

22. [*Power for district in London to adopt Act.*] (*a*)

Power to vestry or district board in London to appropriate land for library, etc.

23. The vestry or district board constituted under the Metropolis Management Act, 1855, for any parish mentioned in Schedule A. or district mentioned in Schedule B. to that Act, as amended by any subsequent Acts, may, if this Act is in force in such parish or district, appropriate with the sanction of the Local Government Board for the purposes of this Act any land which is vested in such vestry or board.

SUPPLEMENTAL PROVISIONS.

Adjustment of interest on termination of agreement.

24. Any agreement under this Act between two or more vestries or library authorities, or between a library authority and any other body, may provide that on the termination of the agreement an adjustment shall be made of the interests of the several parties thereto in any property to the provision of which they have contributed, and as to the mode in which the adjustment shall be arrived at, and in the event of any dispute the adjustment shall on the application of any of the parties be made by an arbitrator appointed by the Local Government Board.

Saving for Oxford.

25. Nothing in this Act shall interfere with the operation of the Act of the session of the twenty-eighth and twenty-ninth years of the reign of her present Majesty, chapter one hundred and eight, so far as it relates to the collection of a rate for a public library in Oxford.

Constitution and proceedings of vestry for purposes of Act.

26. For the purposes of this Act the vestry of a parish shall be any body of persons acting by virtue of any Act of Parliament as or instead of a vestry, and, where there is no such body, shall be the inhabitants of the parish in vestry assembled, but in the latter case the persons registered as county electors in respect of the occupation of property situate in the parish, and no other persons, shall be members of the vestry.

Definitions.

27. In this Act, unless the context otherwise requires,—

The expression "urban district" means a municipal borough, Improvement Act district, or local government district; and "urban authority" means, as regards each such district, the council, improvement commissioners, or local board:

The expression "financial year" means the period of twelve months for which the accounts of a library authority are made up (*b*):

The expression "overseers" includes any persons authorised and required to make and levy poor rates in a parish, and acting instead of overseers:

The expression "common council" means in relation to the city of London the mayor, commonalty, and citizens, acting by the mayor, aldermen, and commons in common council assembled.

Repeal.

28.—(1) (*c*) *The Acts mentioned in the Second Schedule to this Act shall be repealed as from the commencement of this Act, save so far as any of them extend beyond England and Wales; and* where those Acts have been adopted for any library district, that adoption shall be deemed to have been an adoption of this Act, and this Act shall apply accordingly.

(2) (*c*) *For the purpose of this section the said Acts shall be deemed to have been adopted for any district in which they were in force immediately before the commencement of this Act.*

(*a*) This section was repealed by the L. G. A., 1899, s. 35 (2), and Third Schedule. See now ss. 4 and 34 of that Act as to the adoption of this Act in a metropolitan borough.

(*b*) The definition of a voter here following is repealed by the Public Libraries Act, 1901, s. 14, and Sched., *post*, p. 1987, and is now supplied by s. 9 of that Act.

(*c*) Repealed by S. L. R. A., 1908.

29. Nothing in this Act shall be deemed to limit, or to reduce or alter the limit of any rate which any library authority is authorised to levy under or by virtue of any local Act. Saving as to local Acts.

30. [*Commencement of Act, October* 1, 1892.] (*d*)

31. This Act may be cited as "The Public Libraries Act, 1892." Short title.

SCHEDULES. Section 3.

FIRST SCHEDULE (*e*).

SECOND SCHEDULE (*f*). Section 28.

THE PUBLIC WORKS LOANS ACT, 1892.

(55 & 56 VICT. c. 61.) (*g*)

An Act to grant Money for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [28th June 1892.]

* * * * *

2. Section ten of the Public Works Loans Act, 1875 (*h*), and section two of the Public Works Loans Act, 1879 (*i*) (which sections fix the minimum rate of interest on loans), shall, in their application to loans granted after the passing of this Act, have effect as if four per cent. were therein substituted for five per cent. Reduction of minimum rate of interest on loans. 38 & 39 Vict. c. 89. 42 & 43 Vict. c. 77.

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9. This Act may be cited as "The Public Works Loans Act, 1892." Short title.

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THE POLICE ACT, 1893.

(56 & 57 VICT. c. 10.)

An Act to amend the Police Acts. [9th June 1893.]

* * * * *

2.—(1) The council of a borough may by resolution delegate to the watch committee its powers under sections thirty-two and thirty-three of the Town Police Clauses Act, 1847 (*j*), or under any similar enactments in any local Act; Borough police may be employed as fire brigade. 10 & 11 Vict. c. 89.

(*d*) Repealed by S. L. R. A, 1908.

(*e*) This schedule ("Regulations for ascertaining the opinion of the voters in a library district") was repealed, so far as it applied to rural parishes, by the L. G. A., 1894, s. 89. So far as it applied to urban parishes, it became practically obsolete in 1893, for the Public Libraries (Amendment) Act, 1893, s. 2, *post*, p. 1881, substituted the consent of the urban authority for the consent of the voters. It remained, however, in force in the Metropolis until it was finally repealed by the Public Libraries Act, 1901, *post*, p. 1984.

(*f*) This Schedule of Acts repealed (itself repealed by the S. L. R. A., 1908) included the following Public Libraries Acts and Amendment Acts,—1855, 1866, 1871, 1884, 1887, 1889, and 1890.

(*g*) This Act amends the Public Works Loans Act, 1875, *ante*, p. 1608, and the Public Works Loans Act, 1879, *ante*, p. 1697. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*h*) *Ante*, p. 1611.

(*i*) *Ante*, p. 1697.

(*j*) See these sections, *ante*, pp. 1461, 1462.

and where such resolution has been passed, the watch committee may employ constables wholly or partially as firemen:

Provided that no constable, who at the passing of this Act is not employed to act as fireman, shall be so employed without his consent.

(2) The pay of constables exclusively so employed, and the allowances of constables partially so employed, shall be defrayed from the fund or rate which is applicable to the purposes of the fire brigade or fire police (*k*).

(3) The pensions and gratuities granted to such constables, and the allowances and gratuities granted to their widows and children shall be paid out of the police pension fund (*l*); but the council shall pay from the fund or rate applicable to the purposes of the fire brigade or fire police to the police pension fund such contribution as the Secretary of State may, by general or special order, determine to be a fair contribution in respect of such pensions, gratuities, and allowances.

* * * * *

Construction of Act and saving.

7. This Act shall be read as one with the Police Act, 1890, and nothing in this Act shall interfere with or diminish the powers of the Secretary of State under section seventeen of that Act (*m*).

Partial repeal of 10 & 11 Vict. c. 89, and amendment of local Acts.

8.—(1) *The words "any mischief by fire and" in section fourteen of the Town Police Clauses Act,* 1847 (*n*), *are hereby repealed, and* this Act shall have effect notwithstanding anything in any other Act, local or general, to the contrary.

(2) Where any local Act or order contains provisions as to a fire brigade or fire police, the Secretary of State may frame and submit to Parliament a provisional order repealing or modifying such provisions so as to bring them into harmony with the provisions of this Act, and he may by such order unite any existing fire brigade pension fund with the police pension fund, and may make any other adjustments which may appear to him to be necessary in order to give effect to this Act.

Short title.

9. This Act may be cited as "The Police Act, 1893"; and the Police Acts, 1839 to 1890, and this Act may be cited together as the Police Acts, 1839 to 1893.

THE PUBLIC LIBRARIES (AMENDMENT) ACT, 1893.

(56 & 57 VICT. C. 11.) (*o*)

An Act to amend the Public Libraries Act, 1892. [9th June 1893.]

Short title. 55 & 56 Vict. c. 53.

1. This Act may be cited as "The Public Libraries (Amendment) Act, 1893," and shall be construed as one with the Public Libraries Act, 1892 (in this Act referred to as the principal Act), *and these two Acts may be together cited as the Public Libraries Acts,* 1892 *and* 1893.

(*k*) Ordinarily the general district fund or rate. See s. 207 of the P. H. A., 1875, *ante*, p. 468.

(*l*) Created by the Police Act, 1890, s. 16.

(*m*) With regard to the Exchequer contribution to the police pension fund.

(*n*) Prescribing the duties of constables appointed thereunder for the prevention of felonies, etc. Italicised words repealed by S. L. R. A., 1908.

(*o*) See the Public Libraries Act, 1892, *ante*, p. 1870, the Libraries Offences Act, 1898, and the Libraries Act, 1901, *post*, pp. 1916, 1984. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894. Italicised words repealed by S. L. R. A., 1908.

2.—(1) Where a library district is an urban district— *Modification as to adoption, etc., in urban districts.*

(i.) The principal Act may, subject to the conditions contained in the second section of that Act (*p*), be adopted, and the limitation of the maximum rate to be levied for the purposes of that Act may within the limits fixed by that Act be fixed, raised, or removed, by a resolution of the urban authority under this Act:

(ii.) The consent of the urban authority given by a resolution of that authority under this Act shall be substituted in an urban district for the consent of the voters in any case when the consent of the voters is required under the principal Act.

(2) *Section three of the principal Act* (*q*) *is hereby repealed, so far as it relates to an urban district.*

3.—(1) A resolution under this Act shall be passed at a meeting of the urban authority, and one month at least before the meeting special notice of the meeting and of the intention to propose the resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either— *Provision as to a resolution of an urban authority for the adoption, etc., of the principal Act*

(a) given in the mode in which notices to attend meetings of the authority are usually given; or

(b) where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last-known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last-known place of abode in England (*r*).

(2) The resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at a time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix.

(3) A copy of the resolution shall be sent to the Local Government Board.

(4) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement (*s*).

4.—(1) Where the principal Act is adopted for two or more neighbouring urban districts, the library authorities of those districts may by agreement combine (*t*) for any period for carrying the Act into execution; and the expenses of carrying the Act into execution shall be defrayed by such authorities in such proportions as may be agreed on by them. *Power to two or more library authorities to combine.*

(2) For the purposes of the Act a joint committee may be formed, the members whereof shall be appointed by the several combining authorities in such proportions as may be agreed on, but need not be members of any

(*p*) *Ante*, p. 1870.

(*q*) *Ante*, p. 1871. It will be observed that there is no provision in this Act at all corresponding to sub-s. (5) of s. 3 of the principal Act, so that the urban authority are not prevented from reconsidering their resolution within the year.

(*r*) Compare s. 3 (3), (4), of the P. H. A.,, 1890, *ante*, p. 819, and see notes thereto.

(*s*) Compare s. 3 (6) of the P. H. A. 1890, *ante*, p. 820, and note thereto.

(*t*) Power to neighbouring parishes to combine was given by the Public Libraries Act, 1892, *ante*, p. 1870.

of the combining authorities. Any such committee shall have such of the powers of a library authority under the principal Act, except the power of borrowing money (*u*), as the combining authorities may agree to confer upon them.

(3) Where any of the combining authorities are improvement commissioners or a local board the provisions of the principal Act with respect to accounts and audit shall apply to such committee as if they were a local board who were a library authority under the Act (*x*).

THE RIVERS POLLUTION PREVENTION ACT, 1893.

(56 & 57 VICT. c. 31.) (*y*)

An Act to explain the Rivers Pollution Prevention Act, 1876. [27th July 1893.]

Explanation of 39 & 40 Vict. c. 75, s. 3, as to drainage into streams.

1. Where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

Construction and short title.

2. This Act shall be construed as one with the Rivers Pollution Prevention Act, 1876; and the Rivers Pollution Prevention Act, 1876, and this Act may be cited for all purposes as the Rivers Pollution Prevention Acts, 1876 and 1893.

THE BARBED WIRE ACT, 1893.

(56 & 57 VICT. c. 32.) (*z*)

An Act to prevent the use of Barbed Wire for Fences in Roads, Streets, Lanes, and other Thoroughfares (*a*). [27th July 1893.]

Short title.

1. This Act may be cited for all purposes as "The Barbed Wire Act, 1893."

(*u*) See 55 & 56 Vict. c. 53, s. 19, *ante*, p. 1876.

(*x*) See 55 & 56 Vict. c. 53, s. 20, *ante*, p. 1877.

(*y*) See the Rivers Pollution Prevention Act, 1876, *ante*, p. 1645, and the Rivers Pollution Prevention (Border Councils) Act, 1898, *post*, p. 1915. This Act appears to provide for a case like that before the court in *Att.-Gen.* v. *Dorking Union Guardians*, *ante*, p. 67, where it was held that proceedings under the Rivers Pollution Prevention Act, 1876, could not be taken against a local authority merely because a sewer vested in them polluted a stream, they themselves not having constructed or interfered with the sewer. See the notes to s. 3 of the Rivers Pollution Prevention Act, 1876, *ante*, p. 1646, and especially *Rochford R. D. C.* v. *Port of London Authority*, *ante*, p. 1648. The mere fact that a sewer is vested in a local authority under s. 13 of the P. H. A., 1875, does not make the local authority *ipso facto* liable for the discharge of sewage matter from the sewer into a brook (*Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board* (1910), 74 J. P. 253; 103 L. T. 192, which was decided under a special Act; *Titterton* v. *Kingsbury Collieries, Ltd.* (1911), 75 J. P. 295; 104 L. T. 569).

(*z*) This Act concerns urban and rural district councils more in their capacity as highway authorities than sanitary authorities. The subject, however, being at the time novel and of considerable public importance, it has been thought as well to include it in this Appendix.

A landowner erected upon his own land by the side of a public road in Scotland a fence

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(*a*). For note (*a*) see next page.

2. In this Act— Interpretation.

The expression "barbed wire" means any wire with spikes or jagged projections; and the expression "nuisance to a highway" as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using such highway:

In England and Wales the expression "local authority" means any county council, any urban sanitary authority, any sanitary authority in London, *any highway board*, and any *other* local authorities existing, or that may be hereafter created by Parliament, having control over highways (*b*).

. . . . .

3.—(1) Where there is on any land adjoining a highway within the county or district of a local authority a fence made with barbed wire, or in or on which barbed wire has been placed, and such barbed wire is a nuisance to such highway, it shall be lawful for such local authority to serve (*c*) notice in

Removal of barbed wire where nuisance to highway.

of barbed wire, and the road trustees brought an action to have it removed on the ground that it was dangerous to persons and cattle lawfully using the road. The fence was placed about three feet from the boundary line between the road and the landowner's property, and stood entirely upon his land:—*Held*, that the action lay, but upon the defender undertaking so to alter and protect the fence as to remove the danger, the action was dismissed (*Elgin Road Trustees* v. *Innes* (1886), 14 Ct. Sess. Cas. (4th ser.) 48). The occupier of certain land adjoining a public footpath fenced it off from the footpath by barbed wire set back nine feet from the path:—*Held*, that he was liable in damages to a man who tore his clothes on the barbs whilst making way for other persons to pass him on the footpath (*Bird* v. *Frost* (1892), 56 J. P. 164). Plaintiff and defendant were adjoining landowners, and defendant was bound to maintain a boundary fence between their lands for their mutual benefit. Defendant caused a gap in the fence to be made up with barbed wire which was placed three feet within his own boundary. Plaintiff afterwards put a mare into his field, and she injured herself on the wire:—*Held*, that the wire was so placed as to be dangerous to cattle lawfully put by the plaintiff into his field, and that defendant was liable in damages for the injury to the mare (*Bennett* v. *Blackmore* (1890), 26 L. J. 228; 90 L. T. 395). Defendants erected a fence of barbed wire between their railway line and plaintiff's farm. Sheep grazing on plaintiff's farm were injured by coming in contact with the wire:—*Held*, that the defendants were liable for the damage occasioned to the sheep (*M'Quillan* v. *Crommelin Iron Ore Co.* (1892), 26 Ir. L. T. Rep. 15). Lands belonging to plaintiff and defendant, who were adjoining owners, were separated by an old quickset fence. This hedge the defendant dug up and replaced by a new one of young quicks, which he protected by a barbed wire fence of a very severe character, set up with the plaintiff's acquiescence on plaintiff's land. Plaintiff then turned out a mare to graze on his land, and she was injured:—*Held*, that the defendant was liable (*Shipton* v. *Lucas* (1892), 92 L. T. Jo., 297). Defendant put up a barbed wire fence separating his land from a public footpath, and plaintiff was walking along the footpath when a sudden gust of wind blew his coat against the fence and it was torn. No negligence or want of skill or care in the erection of the fence was imputed to the defendant, but the county court judge held that the fence as constructed and placed was dangerous to the public using the footpath and a nuisance. This decision was affirmed on appeal to the High Court (*Stewart* v. *Wright* (1893), 57 J. P. 137; affirmed 9 T. L. R. 480). And in an Irish case of *Collen* v. *Ellis* (1893), 32 L. R. Ir. 491, it was held that a barbed wire fence by the side of a highway may be an obstruction to the free passage thereof.

A valuable collection and review of the American cases on the subject will be found in 95 L. T. Jo. 419.

Upon similar principles a rotten fence abutting on a highway is a nuisance, and if it be the cause of any accident, the owner of the fence is liable (*Harrold* v. *Watney*, [1898] 2 Q. B. 320). But a defendant is not liable in respect of a nuisance created on his premises by trespassers (*Barker* v. *Herbert*, [1911] 2 K. B. 633; 75 J. P. 481), if he does not, and cannot reasonably be expected to know of its existence.

(*a*) This title must not be taken to limit the meaning of the term "highway" as used in the Act. A *cul-de-sac* may be a highway (*Bateman* v. *Bluck* (1853), 18 Q. B. 870; *Young* v. *Cuthbertson* (1854), 1 Macq. H. L. Cas. 455).

(*b*) Italicised words repealed by S. L. R. A., 1908. The remainder of this section only applies to Scotland and Ireland. Highway boards are now superseded by rural district councils under s. 25 of the L. G. A., 1894, *ante*, p. 1003.

(*c*) As to service of notices, see s. 26 of the Highway Act, 1864. And upon the whole text compare s. 94 of the P. H. A., 1875, *ante*, p. 173.

writing upon the occupier of such land requiring him within a time therein stated (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance.

(2) If on the expiration of the time stated in the notice the occupier shall have failed to comply therewith, it shall be lawful for the local authority to apply to a court of summary jurisdiction (*d*), and such court, if satisfied that the said barbed wire is a nuisance to such highway, may by summary order (*e*) direct the occupier to abate such nuisance; and on his failure to comply with such order within a reasonable time the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses incurred in connexion therewith (*f*).

. . . . .

Proceedings where local authority is occupier of the land.

4. Where the local authority are the occupiers of the land, proceedings under this Act may be taken by any ratepayer within the district of the local authority, and a notice to the local authority to abate the nuisance shall be deemed to be properly served if it is served upon the clerk of the local authority, and any ratepayer taking proceedings may do all acts and things which a local authority is empowered to do.

Expenses of local authority.

5. Any expenses incurred by a local authority in the execution of this Act shall be defrayed in like manner as the expenses of the local authority incurred in respect of any highways (*g*).

THE LAW OF COMMONS AMENDMENT ACT, 1893.

(56 & 57 VICT. c. 57.)

An Act to amend the Law relating to Commons. [22nd September 1893.]

Short title of Act.

1. This Act may be cited for all purposes as the "Law of Commons Amendment Act, 1893."

Consent of Board of Agriculture essential to inclosure.

2. An inclosure or approvement of any part of a common purporting to be made under the Statute of Merton (*h*) and the Statute of Westminster the Second (*i*), or either of such statutes, shall not be valid unless it is made with the consent of the Board of Agriculture.

Conditions of consent.

3. In giving or withholding their consent under this Act, the Board shall have regard to the same considerations, and shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876 (*k*), to be taken into consideration, and held by the Board before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not.

Saving of existing rights.

4. Nothing in this Act shall preclude his Majesty, his heirs and successors, or any person whatsoever whose rights or interests are affected by any inclosure or approvement, from taking any proceedings by way of information, action, or otherwise, for the abatement of such inclosure or approvement, and the protection of such rights and interests.

(*d*) As defined by s. 13 (11) of the Interpretation Act, 1889.
(*e*) Without appeal, except by case stated under s. 33 of the S. J. A., 1879.
(*f*) The next sub-section relates only to Ireland.
(*g*) In the case of an urban authority, see s. 216 of the P. H. A., 1875, *ante*, p. 494; and in the case of a rural authority, see s. 29 of the L. G. A., 1894, *ante*, p. 1011.
(*h*) 20 Hen. 3, c. 4.
(*i*) 13 Edw. 1, st. 1, c. 46.
(*k*) 39 & 40 Vict. c. 56, *ante*, p. 1627

THE ISOLATION HOSPITALS ACT, 1893.

(56 & 57 VICT. c. 68.) (*l*)

An Act for enabling County Councils to promote the Establishment of Hospitals for the Reception of Patients suffering from Infectious Diseases.

[21st December 1893.]

1. This Act may be cited for all purposes as "The Isolation Hospitals Act, 1893." Short title.

2. This Act shall not extend to Scotland or Ireland, or to the administrative county of London, or to any county borough, or without the consent of the council of the borough to any borough containing, according to the census for the time being in force, a population of ten thousand persons or upwards, or to any borough containing a less population without the like consent, unless the Local Government Board by order direct that the Act shall apply to such borough. Limits of Act.

3. The council of every county may, on such application being made to them, and proof adduced, as is in this Act mentioned, provide or cause to be provided in any district within their county a hospital for the reception of patients suffering from infectious diseases (in this Act referred to as "an isolation hospital") (*m*). County council to provide for establishment of isolation hospitals on application, etc.

4.—(1) An application to a county council for the establishment of an isolation hospital may be made by any one or more of the authorities, by this Act defined as local authorities (*n*), having jurisdiction in the county, or any part of the county; and any such application may be made in pursuance of a resolution passed at a meeting of such authority by a majority of the members assembled thereat, and voting in manner in which votes are required by law to be given at a meeting of the authority. Any such meeting shall be called together by notice given in manner in which notices of the meetings of the authority concerned are required to be given by law, and specifying the object of the meeting to be the making an application to the county council under this Act. Application, by whom to be made.

(2) An application for the establishment of an isolation hospital may also be made by any number of ratepayers not less than twenty-five, in any contributory place as defined by this Act (*o*).

(*l*) By s. 131 of the P. H. A., 1875, *ante*, p. 235, both urban and rural district councils have power to provide hospitals for the use of the inhabitants of their districts. This Act, by s. 4, enables them to apply to the county council to provide for the establishment of an isolation hospital for their district for persons suffering from infectious diseases. The district for which such a hospital may be provided under this Act is to be fixed by the county council subject to the right of objection by the district council under ss. 8 and 20, *post*, to the inclusion of their district in the hospital area, or to the subsequent variation of that area. By the amending Act, 1 Edw. 7, c. 8, s. 1, *post*, p. 1982, a district council or joint board who have provided a hospital under the P. H. A., 1875, may transfer their hospital to the county council for use as an isolation hospital.

(*m*) It will be observed that hospitals to be provided under this Act are for infectious cases only. Infectious diseases within the meaning of the Act are defined by s. 26, *post*. The observations already made as to the provision of hospitals under s. 131 of the P. H. A., 1875, being subject to the limitation that a nuisance must not be thereby created, are equally applicable here.

(*n*) These are urban and rural district councils. See s. 26, *post*. They do not, however, include boroughs, save to the extent mentioned in s. 2, *supra*.

(*o*) For definition of a contributory place, see s. 26, *post*, p. 1891.

Application, how made.

5.—(1) The application shall be made by petition, and shall state the district for which the isolation hospital is required, and the reasons which the petitioners adduce for its establishment.

(2) The county council shall, by themselves, or by a committee of their body appointed for that purpose, consider the petition, and, if satisfied by the statements of the petition as originally prepared, or by any amendments made therein, that a primâ facie case is made out for a local inquiry, they shall cause such inquiry to be made as to the necessity for the establishment of an isolation hospital.

Effect of report of medical officer of county.

6. The county council may direct an inquiry to be made by the medical officer of health of the county as to the necessity of an isolation hospital being established for the use of the inhabitants of any particular district in the county, and in the event of such medical officer reporting that such an hospital ought to be established for the use of the inhabitants of a district may take the same proceedings in all respects for the establishment of such hospital as if a petition had been presented by a local authority for the establishment of an isolation hospital for the district named in the report of such medical officer of health (*p*).

Conduct of local inquiry.

7. The county council shall conduct the local inquiry into the necessity for the establishment of an isolation hospital, and as to the proper site for the hospital, and the district for which it is to be established (in this Act called the " hospital district "), by a committee consisting of such number of their members, either with or without the addition of such other persons, or in such other manner as the council think expedient. All expenses properly incurred by any such committee shall be paid as hereinafter directed. The local inquiry shall be held subject to such regulations and otherwise as the council thinks fit. Due notice of the time and place at which any inquiry is to be held by the county council shall be given in such manner as the county council may think the best adapted to inform any persons interested (*q*), and such persons may attend and state their case before the members appointed to conduct such inquiry.

8.—(1) Every hospital district constituted under this Act shall consist of a single local area, or two or more local areas, as defined by this Act (*r*).

Variation of district and appeal.

(2) The county council may vary any proposed hospital district by adding to it or subtracting from it any local area (*s*). A local area which is already provided with such isolation hospital accommodation as may in the opinion of the county council be sufficient for the reasonable exigencies of such area, shall not, without the assent of the local authority of such area testified by a resolution of such authority, be included in a hospital district under this Act.

(3) If any local authority (*t*), having jurisdiction within any part of the proposed hospital district, object to the formation of such a district, or to the addition or subtraction thereto or therefrom of any local area within their jurisdiction, such authority may at any time within three months

(*p*) This section provides an alternative method for putting the county council in motion. The inquiry by the county medical officer of health does not, however, dispense with the local inquiry directed to be held under the preceding section.

(*q*) These would apparently include the local authorities for the proposed district and the owners of the land proposed to be taken for the site of the hospital, and, probably, also the adjoining owners.

(*r*) For definition of local area, see s. 26, *post*, p. 1891.

(*s*) Compare s. 20, *post*, as to the alteration of an order for the constitution of a hospital district.

(*t*) Although, under 1 Edw. 7, c. 8, s. 6, *post*, p. 1984, the rural district council is now exclusively the local authority for any contributory place, the parish council still has under that section a right of appeal under this sub-section.

from the date of the order appeal to the Local Government Board (*u*), and the decision of such Board shall be conclusive.

9. On conclusion of a local inquiry by the county council as to the necessity for the establishment of an isolation hospital, the county council shall make an order (*x*), either dismissing the petition, or constituting a hospital district (*y*), and directing an isolation hospital for such district to be established: Provided that the county council shall not take steps for the constitution of a hospital district for one or more contributory places forming a portion of a rural sanitary district within the jurisdiction of the county council, or for one local area, unless the sanitary (*z*) authority of such place or places, or area, assent to the application, or are proved to the satisfaction of the county council to be unable or unwilling to make suitable hospital accommodation for such place, places, or area. Order as to dismissal of petition or constitution of district.

10.—(1) When a hospital district has been constituted, a committee shall be formed by the county council. Any such committee may consist wholly of members of the county council, or partly of [*members of the county council*] (*a*) and partly of representatives of the local area or areas in the district, or wholly of such local representatives. The county council shall make regulations for the election, rotation, and qualification, and for all other matters relating to the constitution of any such committee, subject to these qualifications, that where no contribution is made by the county council to the funds of the hospital (*b*), such committee shall consist, unless the constituent local authorities otherwise desire, wholly of representatives of the local area or local areas of the district, and that if any local authority within the hospital district feels aggrieved by the mode in which any such committee is constituted, it may appeal to the Local Government Board (*c*), and that Board may modify the constitution of any committee so formed by the county council in such manner as the Board think expedient and just. Hospital committee.

(2) A hospital committee shall have all such powers of acquiring land as are hereinafter mentioned (*d*), also all such other powers of providing a hospital by purchase or otherwise, and managing and maintaining the same when so provided, as the county council may delegate to them: Provided that the county council shall retain to themselves the power of inspecting any such hospital, and of raising money by loan for the purposes of such hospital (*e*).

(3) A hospital committee shall be a body corporate, having a perpetual succession and a common seal, under such name and style as may be conferred on it by the county council. It shall be capable of acquiring land, by devise, gift, purchase or otherwise, without licence in mortmain.

(4) Where a hospital district is an area wholly or as to the greater part thereof under the jurisdiction of any corporate local authority (*f*), the county council may, if they think fit, invest such local authority with all the powers

(*u*) As to appeals to the L. G. B., see s. 24, *post*.

(*x*) By 1 Edw. 7, c. 8, s. 7, *post*, the county council must, as soon as may be, send a copy of the order to the L. G. B. For power to vary the order subsequently, see s. 20.

(*y*) Power to vary the district is given by s. 8, *supra*. As to payment of expenses where the hospital district consists of more than one local area, see s. 18, *post*.

(*z*) *Sic. Quære* "local authority."

(*a*) By 1 Edw. 7, c. 8, s. 8, the words "representatives of the county council, whether members of the council or not," are substituted for "members of the county council."

(*b*) Power to make such contribution is given by s. 21.

(*c*) As to appeals to the L. G. B., see s. 24, *post*.

(*d*) See s. 11, *post*.

(*e*) Power to raise money by loan is given by s. 22, *post*.

(*f*) This will include urban and rural district councils.

of a hospital committee under this Act, and thereupon such authority shall be deemed to be the hospital committee for such district, and shall exercise all the powers of such committee under its original corporate name.

Purchase of land for hospital.

11. Subject to any directions given by the county council, a hospital committee may purchase or lease any land, whether within or without the hospital district, for the purpose of erecting thereon an isolation hospital, and may exercise all the powers conferred on a sanitary authority by the provisions of the Public Health Act, 1875, and the Acts amending the same, relating to the purchase of lands. For the purposes of this section the provisions contained in sections one hundred and seventy-five to one hundred and seventy-eight (inclusive), and sections two hundred and ninety-six to two hundred and ninety-eight (inclusive) of the Public Health Act, 1875, shall, so far as consistent herewith, be incorporated with this Act (*g*).

38 & 39 Vict. c. 55.

Management of hospital, and regulations.

12. A hospital committee may from time to time make all necessary rules and regulations for the conduct and management of their hospital and the patients therein.

Ambulances to be provided.

13. Every isolation hospital shall be provided with an ambulance or ambulances for the purpose of conveying patients to the hospital, and shall, so far as practicable, be in connexion with the system of telegraphs (*h*).

Additional hospital accommodation.

14. A hospital committee may, in expectation of or in the event of an outbreak of any infectious disease (*i*), provide any accommodation in addition to their existing accommodation by hiring, or otherwise acquiring, any buildings, tents, wooden houses, or other places for the reception of patients. A hospital committee may, in addition to, or instead of, providing a central hospital, establish within their district hospitals in cottages or small buildings, or otherwise as they may think expedient. A hospital committee may also before they have established a permanent hospital or hospitals, provide for their district such temporary accommodation as in this section mentioned.

Training of nurses.

15. Subject to any regulations made by the county council, a hospital committee may make arrangements for the training of nurses for attendance on patients suffering from any infectious disease, either inside or outside the hospital, and may charge for the attendance of such nurses outside the hospital; and the expenses of any such nurses, after deducting any profits derived from their services, shall be establishment expenses of the hospital, within the meaning of this Act (*k*).

Charges for patients.

16.—(1) There shall be charged with respect to every person admitted into the hospital such sum as the hospital committee may think sufficient to defray the expenses in this Act defined as patients' expenses (*l*) incurred in respect of such person; and there shall be added thereto, in the case of persons brought from beyond the hospital district, such sum as the committee may think fit, as a contribution to the structural and establishment expenses.

(2) Persons desirous of being provided with accommodation of an exceptional character may be so provided on their undertaking, to the satisfaction

(*g*) See the sections referred to, *ante*, pp. 410—424, 625—629. As to hiring temporarily a hospital from a district council whilst the committee are building their permanent hospital, see 1 Edw. 7, c. 8, s. 3, *post*, p. 1983.

(*h*) As to the provision and use of ambulances generally, see the P. H. A., 1875, s. 123, and notes thereto, *ante*, p. 227.

(*i*) For definition of infectious disease, see s. 26, *post*.

(*k*) See as to establishment expenses, s. 17, *infra*.

(*l*) See s. 17, *infra*.

of the committee, to pay for the same a sum fixed by the committee, and also to pay for all other expenses incurred in respect of their maintenance in the hospital, and all expenses so incurred in respect of such a patient are in this Act referred to as "special patients' expenses."

Classification of expenses.

17.—(1) The expenses to be incurred in respect of any isolation hospital under this Act shall be classified as structural expenses, establishment expenses, and patients' expenses.

"Structural expenses" shall include the original cost of providing the hospital, including the purchase (if any) of the site, and the furnishing such hospital with the necessary appliances and furniture required for the purpose of receiving patients; also any permanent extension or enlargement of the hospital, or any alteration or repair of the drainage, and any structural repairs; but shall not include ordinary repairs, painting, cleaning, or the renewal or keeping in order of the appliances and furniture, or the supply of new appliances or furniture.

"Establishment expenses" means the cost of keeping the hospital, its appliances and furniture, in a state requisite for the comfort of the patients, also the salaries of the doctors, nurses, servants, and all other expenses for maintaining the hospital in a fit state for the reception of patients.

"Patients' expenses" means the cost of conveying, removing, feeding, providing medicines, disinfecting, and all other things required for patients individually, exclusive of structural and establishment expenses (*m*).

(2) All expenses incurred by a county council in and about the formation of a hospital district, including the costs of any inquiries, and the expenses of obtaining land and other preliminary expenses, shall be deemed to be structural expenses.

(3) In the case of any doubt arising as to what are structural expenses, establishment expenses, or patients' expenses within the meaning of this Act, the decision of the hospital committee shall be conclusive.

Payment of expenses.

18. All expenses incurred by a county council or by a hospital committee under this Act, with the exception of patients' expenses, and special patients' expenses, shall, when a hospital district consists of a single local area, be defrayed out of the local rate of that area (*n*). Where the hospital district consists of more than one local area, all the expenses, save as aforesaid, incurred by the hospital committee shall be paid out of a common fund to which all receipts shall be carried, and to which the local authorities (*o*) in the hospital district shall contribute in such proportions as the county council by their order constituting the district (*p*) may determine.

Section two hundred and eighty-four of the Public Health Act, 1875 (*q*), shall apply to the sums to be contributed by the local authorities under this section as if the same were sums to be contributed by component districts and the hospital committee were a joint board under that Act. 38 & 39 Vict. c. 55.

Recovery of patients' expenses.

19.—(1) Patients' expenses (*r*), in respect of any person who at the time of his reception into the hospital, or at any time within fourteen days previously is or has been in receipt of poor law relief, shall be a debt due to the hospital committee from the guardians of the union from which he

(*m*) As to expenses of burial, see s. 19 (5).

(*n*) For definitions of "local area" and "local rate," see s. 26, *post*. As to contributions out of the county rate, see s. 21, *infra*.

(*o*) Defined in s. 26.

(*p*) See s. 9.

(*q*) See this section, *ante*, p. 615.

(*r*) Defined in s. 17, *supra*.

is sent, and shall be recoverable from them in a summary manner (*s*) or otherwise (*t*).

(2) Patients' expenses, in respect of a non-pauper patient, shall be a debt due to the hospital committee, and recoverable in a summary manner from the local authority of the local area from which the patient is sent, and shall be paid out of the local rate (*u*).

(3) Where a patient has been brought from a place beyond the hospital district, any additional charges made by the hospital committee in respect of such patient shall be recoverable as if they were part of the patients' expenses.

(4) Special patients' expenses (*x*) shall be a debt recoverable in a summary manner from the patient, or from the estate of the patient, in respect of whom the expenses have been incurred.

(5) The expenses of the burial of any patient dying in the hospital shall be payable in the same manner in which the expenses of his maintenance are payable.

Power of county council to alter order.

20. A county council may, on the application of a hospital committee, and with the assent of any local authority concerned in such alteration, alter any order made by them for the establishment of a hospital (*y*).

Power of county councils to contribute to hospitals.

21. A county council may, where they deem it expedient so to do for the benefit of the county, contribute out of the county rate a capital or annual sum towards the structural and the establishment expenses of an isolation hospital, or to either class of such expenses (*z*).

Power to borrow money.

22. A county council may borrow on the security of the county rate, and in manner provided by the Local Government Act, 1888 (*a*), any money required for the purpose of carrying into effect the provisions of this Act; and any loans so borrowed, and any other money expended by them for the purposes of this Act, together with interest thereon [*at the rate of four pounds per centum per annum*] (*b*) shall be repaid to the county council out of the local rate, as in this Act directed (*c*); and, in the case of a loan, shall be repaid within a period not exceeding that within which the loan is repayable by the county council.

(*s*) By the civil debt procedure under the S. J. A., 1879, ss. 6 and 35.

(*t*) *E.g.*, in the county court. This section removes a difficulty which is not provided for in cases under s. 132 of the P. H. A., 1875, *ante*, p. 241.

(*u*) For definitions of local area, local authority, and local rate, see s. 26, *post*. The civil debt procedure will be applicable. It is immaterial whether the patient has been sent to the hospital at the instance of the local authority or not. The local authority have a remedy over under s. 132 of the P. H. A., 1875, *ante*, p. 241.

(*x*) See s. 16 (2). This sub-section does not give a remedy against any person other than a patient not being the legal personal representative of a deceased patient, such as a parent or guardian or employer. If a parent or guardian or employer can be made liable at all, it must be by virtue of a contract express or implied.

(*y*) Power to vary the district is given by s. 8 (2).

(*z*) As to what are structural and establishment expenses, see s. 17, *supra*. By s. 18 these fall primarily on the local rate. By the amending Act, 1 Edw. 7, c. 8, s. 2, *post*, p. 1983, the power conferred on a county council by this section is extended to contributions to any hospital provided by a district council or joint board for the reception of patients suffering from infectious disease, subject to the consent of the L. G. B. in certain cases.

(*a*) See s. 69 of that Act.

(*b*) The words in italics are repealed by 1 Edw. 7, c. 8, s. 4, and by that section interest may in all cases be at a rate agreed between the county council and the hospital committee, or in default of agreement, at a rate determined by the L. G. B.

(*c*) Sums required for the contribution of a capital sum under s. 21, *supra*, are not repayable out of the local rate, but out of the county fund. See 1 Edw. 7, c. 8, s. 2 (2), *post*, p. 1983

23. A person shall not by reason of his being admitted into and maintained in an hospital established in pursuance of this Act suffer any disqualification or any loss of franchise or other right or privilege (*d*). Treatment in hospital not to disqualify.

24. Sub-sections one and five of section eighty-seven of the Local Government Act, 1888 (*e*), shall apply in every case where the Local Government Board are authorised to determine any question on appeal to them. Inquiries by Local Government Board.

25. The provisions of sections two hundred and forty-five, two hundred and forty-seven, two hundred and forty-nine and two hundred and fifty of the Public Health Act, 1875, as amended by the District Auditors Act, 1879, shall apply to the accounts of any hospital committee, and of any officers or assistants of such committee, and to the audit of such accounts, as if such committee were an urban authority other than the council of a borough (*f*). Audit of accounts.

26. A " local area " means in this Act any one of the following localities, that is to say, an urban sanitary district, a rural sanitary district, or any contributory place, or where a local area is included in more than one county, the part of the area included in each county. Definitions.

A " contributory place " has the same meaning in this Act as in section two hundred and twenty-nine of the Public Health Act, 1875 (*g*). 38 & 39 Vict. c. 55.

A " local authority " means in this Act, as respects an urban sanitary district, the urban sanitary authority ; as respects a rural sanitary district, the rural sanitary authority, and in the case of any contributory place being a parish, the vestry or other authority in which the powers of the vestry may be vested by any Act of Parliament, and in the case of any other contributory place situated within the district of a rural sanitary authority, such rural sanitary authority (*h*).

The " local rate " means, as respects an urban or rural sanitary district or contributory place, the rate out of which expenses incurred in the execution of the Acts relating to public health are directed to be paid, and in the case of any contributory place the expenses incurred in the execution of this Act shall be deemed to be special expenses (*i*).

The expression " infectious diseases " in this Act has the same meaning as in the Infectious Diseases (Notification) Act, 1889 (*k*), and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, and may be applied to any other infectious disease, by order of the county council, or any committee to whom they have delegated their powers under this section, in like manner as if such council or committee were a local authority acting under that Act (*l*). 52 & 53 Vict. c. 72.

(*d*) An extension of the Medical Relief Disqualification Removal Act, 1885. *Cf.* the Cleansing of Persons Act, 1897, s. 1, *post*, p. 1902, and statutes cited in note thereto.

(*e*) See *ante*, p. 781.

(*f*) See the sections referred to *ante*, pp. 539, 541, 548, 550, 1688. Under these sections the L. G. B. have issued a General Order dated August 22nd, 1899, regulating the accounts of isolation hospital committees, amended by General Order dated June 3rd, 1903. See 1 L. G. R. 294.

(*g*) See this section, *ante*, p. 509.

(*h*) By 1 Edw. 7, c. 8, s. 6, *post*, p. 1984, the rural district council is now exclusively the local authority in the case of any contributory place.

(*i*) See ss. 207 and 229 of the P. H. A., 1875, *ante*, pp. 468, 509.

(*k*) See s. 6 of that Act, *ante*, p. 799.

(*l*) See s. 7 of that Act, *ante*, p. 800.

THE PUBLIC WORKS LOANS ACT, 1894.

(57 & 58 VICT. c. 11.) (*m*)

An Act to grant Money for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [18th June 1894.]

* * * * *

Explanation of Schedule. 38 & 39 Vict. c. 89.

3. In the First Schedule to the Public Works Loans Act, 1875 (specifying the works for the purpose of which the Public Works Loan Commissioners may lend money), the expression "main drainage" shall be construed as including works of underground drainage.

* * * * *

Short title.

5. This Act may be cited as "The Public Works Loans Act, 1894."

* * * * *

THE MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. c. 60.)

An Act to consolidate Enactments relating to Merchant Shipping. [25th August 1894.]

* * * * *

PART II.

MASTERS AND SEAMEN.

* * * * *

Protection of Seamen from Imposition.

Seamen' lodging-houses (*n*).

214.—(1) A local authority hereinafter mentioned (*o*) whose district (*o*) includes a seaport may, with the approval of the Board of Trade, make byelaws relating to seamen's lodging-houses in their district, and those byelaws shall be binding upon all persons keeping houses in which seamen (*p*) are lodged and upon the owners thereof and persons employed therein.

(2) The byelaws shall amongst other things provide for the licensing, inspection, and sanitary conditions of seamen's lodging-houses, for the publication of the fact of a house being licensed, for the due execution of the byelaws, for preventing the obstruction of persons engaged in securing that execution, for the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and for the exclusion from licensed houses of persons of improper character, and shall impose sufficient fines not exceeding fifty pounds for the breach of any byelaw (*q*).

(*m*) This Act amends the Public Works Loans Act, 1875, Schedule I., *ante*, p. 1625.

(*n*) This section takes the place of s. 48 of the Merchant Shipping (Fishing Boats) Act, 1883, now repealed by this Act.

(*o*) See sub-s. (7), *post*.

(*p*) Defined by s. 742, *post*.

(*q*) By s. 680 (2) of this Act, any offence committed or fine recoverable under a byelaw made in pursuance of this Act may be prosecuted or recovered in the same manner as an offence or fine under this Act. By s. 680 (1) (b) an offence under this Act, punishable by a fine not exceeding £100, shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts. Section 682 gives an appeal to quarter sessions in case the fine inflicted exceeds five pounds; s. 683 limits the time for commencing proceedings to within six months

(3) The byelaws shall come into force from a date therein named, and shall be published in the London Gazette (*r*) and in one newspaper at the least circulating in the district, and designated by the Board of Trade.

(4) If the local authority do not within a time in each case named by the Board of Trade make, revoke, or alter, any byelaws under this section, the Board of Trade may do so (*s*).

(5) Whenever her Majesty in Council orders (*t*) that in any district or any part thereof none but persons duly licensed in pursuance of byelaws under this section shall keep seamen's lodging-houses or let lodgings to seamen from a date therein named, a person acting in contravention of that order shall for each offence be liable to a fine not exceeding one hundred pounds (*u*).

(6) A local authority may defray all expenses incurred in the execution of this section out of any funds at their disposal as sanitary authority (*x*), and fines recovered for a contravention of this section or of any byelaw under this section shall be paid to such authority and added to those funds.

(7) In this section the expression "local authority" means in the administrative county of London the county council, and elsewhere in England the local authority under the Public Health Acts (*y*) . . . and the expression "district" means the area under the authority of such local authority.

* * * * *

PART III.

PASSENGER AND EMIGRANT SHIPS.

* * * * *

3. EMIGRANT SHIPS.

Passage Brokers (*z*).

341.—(1) Any person who sells or lets or agrees to sell or let, or is anywise concerned in the sale or letting of steerage passages (*a*) in any ship proceeding Passage broker.

after the commission of the offence; s. 684 gives jurisdiction not only in the place where the offence was actually committed, but also in any place where the offender may happen to be. Sub-section (6) of the present section deals with the application of fines recovered.

(*r*) See s. 740, *post*, p. 1897.

(*s*) This power has not yet been exercised, nor has there been any exercise of the corresponding power under the repealed statute.

(*t*) No such Order in Council has yet been made, either under the present Act, or under the corresponding provision in the repealed statute.

Section 738 of this Act gives power to revoke, alter, or add to any Order in Council, when made, and provides for the publication of Orders in Council in the London Gazette, for laying them before Parliament, and for their taking effect.

(*u*) As to recovery of such fine, see ss. 680—684 of the Act, and as to its application, when recovered, see ss. 699, 716.

(*x*) As to these funds, in the case of an urban sanitary authority, see s. 207 of the P. H. A., 1875, *ante*, p. 468. In a rural district it is not clear whether it is intended that the expenses shall be general or special, *i.e.*, chargeable only to the contributory place comprising the town. See s. 229 of the same Act, *ante*, p. 509.

(*y*) That is, presumably, under the P. H. A., 1875, and amending Acts. See the Short Titles Act, 1896.

Words relating to Scotland and Ireland only are here omitted.

(*z*) The sections under this heading take the place of ss. 66—69, inclusive, and 81 of the Passengers Act, 1855, now repealed by this Act.

By s. 23 of the Merchant Shipping Act, 1906, the provisions of Part III. of the principal Act (*i.e.*, this Act) relating to passage brokers shall apply to any person who at any place in the British Islands sells or lets or agrees to sell or let or is anywise concerned in the sale or letting of steerage passages from any place in Europe not within the Mediterranean Sea.

(*a*) Defined by s. 268. The selling or letting intended by this section is a selling or letting in a named ship of a passage to commence at a definite time for a specified voyage,

from the British Islands to any place out of Europe not within the Mediterranean Sea shall for the purposes of this Part of this Act be a passage broker.

(2) The acts and defaults of any person acting under the authority, or as an agent, of a passage broker, shall for the purposes of this Act, be deemed to be also the acts and defaults of the passage broker.

Passage brokers to enter into bond and obtain licence.

342.—(1) A person shall not act directly or indirectly as a passage broker unless he—

(a) has entered, with two good and sufficient sureties approved by the emigration officer nearest to his place of business, into a joint and several bond (*b*) to the Crown, in the sum of one thousand pounds; and

(b) holds a licence for the time being in force to act as passage broker.

(2) The bond shall be renewed on each occasion of obtaining a licence, and shall not be liable to stamp duty; it shall be executed in duplicate, and one part shall be deposited at the office of the Board of Trade, and the other part with the said emigration officer.

(3) The emigration officer may, in lieu of two securities, accept the bond of any guarantee society approved by the Treasury.

(4) There shall be exempted from this section—

(a) the Board of Trade, and any person contracting with them or acting under their authority; and

(b) any passage broker's agent duly appointed under this Act (*c*).

(5) If any person fails (*d*) to comply with any requirement of this section, he shall for each offence be liable to a fine not exceeding fifty pounds (*e*).

Granting of licences to passage brokers.

343.—(1) Application for a licence to act as passage broker shall be made to the licensing authority for the place in which the applicant has his place of business.

(2) The licensing authority, upon the applicant proving to their satisfaction that he—

(a) has entered into and deposited one part of such bond as is required by this Act; and

(b) has given to the Board of Trade at least fourteen days' clear notice (*f*) of his intention to apply for a licence,

may grant the licence (*f*), and shall forthwith send to the Board of Trade notice (*f*) of such grant.

(3) The licensing authority shall be—

(a) in the administrative county of London the justices of the peace at petty sessions;

(b) elsewhere in England, the council of a county borough or county district (*g*); . . .

and therefore that a person who agreed to procure a passage for another, no ship or time being specified, had not acted as a passage broker (*Morris* v. *Howden*, [1897] 1 Q. B. 378; 61 J. P. 246).

(*b*) The form of bond is prescribed by s. 360 and Schedule XIV., *post*, pp. 1896, 1898.

(*c*) A passage broker's agent, in order to be duly appointed under this Act, must, under s. 345, hold an appointment in writing from the passage broker, in the form required by the Act, and countersigned by the emigration officer at the port nearest to the place of business of the passage broker.

(*d*) Includes refusal; see s. 742, *post*, p. 1897.

(*e*) This fine cannot be sued for and recovered by the licensing authority, but only by the persons authorised under s. 356, *post*, p. 1896.

(*f*) A form is prescribed by s. 360 and Schedule XIV.

(*g*) Under the repealed statutes it was the justices in petty sessions who were the licensing authority, but their powers were transferred to district councils by ss. 27 and 32 of the L. G. A., 1894, *ante*, pp. 1009, 1013.

The remainder of this section relates to Scotland and Ireland only, and is, therefore, omitted.

344.—(1) A passage broker's licence shall, unless forfeited, remain in force until the thirty-first day of December in the year in which it is granted, and for thirty-one days afterwards. Forfeiture of licence.

(2) Any Court (*h*), when convicting a passage broker of an offence under this Part of this Act or of any breach or non-performance of the requirements thereof, may order that his licence be forfeited, and the same shall be forfeited accordingly.

(3) The Court shall forthwith send to the Board of Trade a notice of any such order.

345. [*Passage brokers' agents.*]

346. [*List of agents and runners to be exhibited by brokers, and sent to emigration officers.*]

Emigrant Runners (*k*).

347. If any person other than a licensed passage broker or his bonâ fide salaried clerk, in or within five miles of the outer boundaries of any port (*l*), for hire or reward or the expectation thereof directly or indirectly conducts, solicits, influences, or recommends any intending emigrant (*m*) to or on behalf of any passage broker, or any owner charterer or master (*n*) of a ship, or any keeper of a lodging-house tavern or shop, or any money changer or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or gives or pretends to give to any intending emigrant any information or assistance in any way relating to emigration, that person shall for the purposes of this Part of this Act be an emigrant runner. Emigrant runner.

348.—(1) The licensing authority (*o*) for passage brokers for the place in which a person wishes to act as an emigrant runner, and to carry on his business, may, upon his application and on the recommendation in writing of an emigration officer, or of the chief constable or other head officer of police in such place (but not otherwise), grant, if they think fit, to the applicant a licence to act as emigrant runner. Emigrant runner's licence.

(2) The emigrant runner shall, within forty-eight hours after his licence is granted, lodge the same with the nearest emigration officer, and that officer shall—

(a) register the name and abode of the emigrant runner in a book to be kept for the purpose, and number each name in arithmetical order; and

(b) upon receipt of a fee, not exceeding seven shillings, supply to the emigrant runner a badge of such form and description as the Board of Trade approve,

but in case of a renewed licence, the officer need only note the renewal and its date in his registry book against the original entry of the emigrant runner's name.

(3) An emigrant runner's licence shall remain in force until the thirty-first day of December in the year in which it is granted, unless sooner revoked by

(*h*) Defined by s. 742, *post*, p. 1897.

(*k*) The sections under this heading take the place of ss. 75—79, inclusive, and 80 of the Passengers Act, 1855, now repealed by this Act.

(*l*) Defined by s. 742, *post*, p. 1897.

(*m*) This word is not defined by the Act, and so probably would include any person proposing to take a steerage passage on board an emigrant ship as defined by s. 268.

(*n*) Defined in s. 742, *post*, p. 1897.

(*o*) See s. 343.

any justice for any offence against this Act or for any other misconduct committed by the holder of such licence, or unless forfeited under the provisions hereinafter contained (*q*).

(4) When an emigrant runner changes his abode, the emigration officer shall register the change in his registry book.

349. [*Renewal of badge.*]

Penalties on persons acting without licence or badge, using badge not lawfully issued, or employing unlicensed person.

350.—(1) A person shall not—

(a) act as an emigrant runner without being duly licensed and registered; or

(b) retain or use any emigrant runner's badge not issued to him in manner by this Act required; or

(c) counterfeit or forge any emigrant runner's badge; or

(d) employ as an emigrant runner any person not duly licensed and registered.

(2) If any person acts in contravention of this section, he shall for each offence be liable to a fine not exceeding five pounds (*r*).

351. [*Penalties on emigrant runners for certain acts of misconduct.*]

352. [*Emigrant runner's commission and fees.*]

* * * * *

Legal Proceedings (*s*).

Recovery of fines.

356. All fines and forfeitures under the provisions of this Part of the Act (other than the provisions relating to passenger steamers only) shall be sued for by the following officers; that is to say,

(a) Any emigration officer;

(b) Any chief officer of customs; and also

(c) In the British Islands, any person authorised by the Board of Trade and any officer of customs authorised by the Commissioners of Customs.

* * * * *

Supplemental.

Forms

360.—(1) The forms set out in the Fourteenth Schedule to this Act, or forms as near thereto as circumstances admit, shall be used in all cases to which such forms are applicable.

* * * * *

Application of Part III. as regards Emigrant Ships (*t*).

Application to certain voyages.

364. The provisions of this Part of this Act respecting emigrant ships shall apply to all voyages from the British Islands to any port out of Europe and not within the Mediterranean Sea.

(*q*) In s. 351. These provisions, however, do not concern the licensing authority.

(*r*) This fine cannot be sued for and recovered by the licensing authority, but only by the persons authorised under s. 356, *infra.*

(*s*) The following section takes the place of s. 84 of the Passengers Act, 1855, now repealed by this Act, and is here inserted merely for the purpose of showing that the licensing authority cannot take proceedings for the recovery of fines.

(*t*) The following sections are here inserted for the purpose of explaining the limits of application of the foregoing sections as to passage brokers and emigrant runners.

365.—(1) This Part of this Act, so far as the same is applicable, shall apply to every ship carrying steerage passengers on a colonial voyage as defined (*u*) by this Part of this Act, provided that the enactments thereof relating to— Limited application of Part III. of Act to colonial voyages.

. . . . .

(d) passage brokers;
(e) emigrant runners;

. . . . .

shall not apply.

* * * * *

PART XIV.

Supplemental.

* * * * *

Transmission and Publication of Documents.

740. Where a document is required by this Act to be published in the London Gazette (*x*), it shall be sufficient if notice thereof is published in accordance with the Rules Publication Act, 1893 (*y*). Publication in London Gazette. 56 & 57 Vict. c. 66.

* * * * *

Definitions and Provisions as to Application of Act.

742. In this Act, unless the context otherwise requires, the following expressions (*z*) have the meanings hereby assigned to them; (that is to say,) Definitions.

. . . . .

"Master" includes every person (except a pilot) having command or charge of any ship;

"Seaman" includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;

. . . . .

"Court" in relation to any proceeding includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates;

. . . . .

"Port" includes place;

. . . . .

Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

* * * * *

(*u*) By s. 270, for the purposes of this Part of this Act, a colonial voyage means a voyage from any port in a British possession, other than British India and Hong Kong, to any port whatever, where the distance between such ports exceeds 400 miles, or the duration of the voyage, as determined under this Part of this Act, exceeds three days.

(*x*) See s. 214 (3), *ante*, as to publication of byelaws.

(*y*) By s. 3 (3) of that Act, where any statutory rules are required by any Act to be published or notified in the London Gazette a notice in the Gazette of the rules having been made, and of the place where copies of them can be purchased, shall be sufficient compliance with the said requirement.

(*z*) Only those expressions are here included which occur in the foregoing sections.

Repeal and Savings.

Repeal. **745.** (*a*)—(1) *The Acts mentioned in the Twenty-second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule. Provided that—*

(a) Any Order in Council, licence, certificate, byelaw, rule, or regulation made or granted under any enactment hereby repealed shall continue in force as if it had been made or granted under this Act;

. . . . .

(c) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment of this Act;

. . . . .

(2) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals. 52 & 53 Vict. c. 63.

. . . . .

Savings **746.** . . .

(2) Any local Act which repeals or affects any provisions of the Acts repealed by this Act shall have the same effect on the corresponding provisions of this Act as it had on the said provisions repealed by this Act.

. . . . .

Short Title and Commencement.

Short title **747.** This Act may be cited as "The Merchant Shipping Act, 1894."

748. [*Commencement of Act, January* 1, 1895.]

SCHEDULES.

FOURTEENTH SCHEDULE.

FORMS UNDER PART III. (PASSENGER AND EMIGRANT SHIPS.)

FORM IV.

[S. 342 FORM OF PASSAGE BROKER'S BOND.

KNOW all men by these presents, that we, *A. B.* [*insert names and surnames in full, with occupation and address of each of the parties*], of , *C. D.*, of, etc., and *E. F.*, of, etc., are held and firmly bound unto our Sovereign , by the grace of God of the United Kingdom of Great Britain and Ireland , defender of the faith, in the sum of one thousand pounds of good and lawful money of Great Britain, to be paid to our said Sovereign, her [his] heirs and successors; to which payment well and truly to be made we bind ourselves and every of us, jointly and severally, and our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of , one thousand eight hundred and .

Whereas by Part III. of the Merchant Shipping Act, 1894, it is amongst other things enacted, that a person shall not, save as therein excepted, directly or indirectly act as a passage broker in respect of steerage passages from the British Islands to any port out of Europe, and not within the Mediterranean Sea, unless such person has entered, with two good and sufficient sureties, to be approved by the emigration officer nearest to his place of business, into a

(*a*) Italicised words repealed by S. L. R. A., 1908.

joint and several bond to the Crown, in the sum of one thousand pounds: and whereas the said *C. D.* and *E. F.* have been duly approved by the proper emigration officer as sureties for the said *A. B.*:

Now the condition of this obligation is such, that if the above bounden *A. B.*, and every agent whom he may employ in his business of a passage broker, shall well and truly observe and comply with all the requirements of the said Act, so far as the same relate to passage brokers, and further shall well and truly pay all fines and forfeitures, and also all sums of money, by way of subsistence money, or of return of passage money or compensation, to any steerage passenger, or on his account, together with all costs which the above bounden *A. B.*, or any of his agents as aforesaid, may at any time be adjudged to pay under or by virtue of the said Act, then and in such case this obligation to be void, otherwise to remain in full force.

Signed, sealed, and delivered by the above bounden *A. B.*, *C. D.*, and *E. F.*, in the presence of [*insert the names and addresses in full of the witnesses*].

N.B.—This bond is to be executed in duplicate, in the presence of and to be attested by an emigration officer or his assistant, or an officer of Customs, or a magistrate, or a notary public. One part is to be deposited with the Board of Trade, and the other part with the emigration officer at the port nearest to the place of business of the broker.

Each member of a firm or partnership who acts as a passage broker must give a separate bond with two sureties.

The bond is exempt from stamp duty, but must be renewed annually with the licence.

Form V.

Form of Passage Broker's Licence. S. 343.]

A. B. [*the names and surnames in full, with the address and trade or occupation of the party applying for the licence, must be correctly inserted. If a member of a firm, the names and surnames of all the members must be given*], of in the having shown to the satisfaction of the council of [*or* me (*or* us), the undersigned], that he hath given bond to the Crown, as required by the Merchant Shipping Act, 1894, and also given fourteen days' previous notice to the Board of Trade of his intention to apply for a licence to carry on the business of a passage broker in respect of steerage passages from the British Islands to any port out of Europe, and not within the Mediterranean Sea, the said council [*or* I (*or* we), the undersigned], having had no sufficient cause shown and seeing no valid reason why the said *A. B.* should not receive such licence, do hereby license and authorise the said *A. B.* to carry on the business of a passage broker as aforesaid until the end of the present year, and thirty-one days afterwards, unless this licence shall be sooner determined by forfeiture for misconduct on the part of the said *A. B.* as provided in the Merchant Shipping Act, 1894.

Given under the common seal of the said council [*or* my hand and seal (*or* our respective hands and seals)] this day of , 18 , at .

(L.S.) (Signature authenticating seal.)

(*Or* Signature) (L.S.) Sheriff, *or* sheriff substitute, *or* justices of the peace, *as the case may be.*

Note.—Each member of a firm or partnership who acts as a passage broker must have a separate licence.

Form VI.

Form of Notice to be given to the Board of Trade by Licensing Authority granting a Licence. [S. 343

Gentlemen,—

This is to give you notice, that the council of [*or* we (*or* I), the undersigned] did on the day of , 18 , license *A. B.*, of [*insert*

the names and surnames in full, with the address and occupation of the party], to carry on the business of a passage broker under the provisions of the Merchant Shipping Act, 1894.

Signatures { Clerk of the said council *or* sheriff *or* justices of the peace, *or as the case may be.*

Place .

Date .

To the Board of Trade, London.

FORM VII.

[S. 343] FORM OF NOTICE to be given to the Board of Trade by an applicant for a Passage Broker's Licence.

Gentlemen,—

I, *A. B.* [*the names and surname in full, with the address and trade or occupation of the party applying for a licence, must be here correctly inserted*], of , in , do hereby give you notice that it is my intention to apply, after the expiration of fourteen clear days from the date of putting this notice into the post, to the council for the city, *or* borough, *or* district of , *or if in Scotland* to the sheriff *or* sheriff substitute of , *or if in Ireland*, to the justices assembled in petty sessions to be held [*the place or district in which the party giving the notice has his place of business, as the case may be*], for a licence to carry on the business of a passage broker under the Merchant Shipping Act, 1894.

Signature .

Date .

To the Board of Trade, London.

FORM X.

[S. 348.] FORM OF EMIGRANT RUNNER'S ANNUAL LICENCE.

A. B. [*the names and surname in full, with the address of the party applying for the licence, must be here correctly inserted*], of , in the , having made application in writing to the council of [*or* me, the sheriff, *or* us, the undersigned justices of the peace assembled in petty sessions, for the of] to grant to him a licence to enable him to be registered as an emigrant runner in and for [*district, town, or place in which the emigrant runner is to carry on his business*], and the said [*A. B.*] having also been recommended as a proper person to receive such licence by an emigration officer, *or* by the chief constable [*or other head officer of police, as the case may be*] of [*the district, town, or place in which the said A. B. is to carry on his business*]: the said council [*or* I, the sheriff, *or* we, the under-mentioned justices], having no sufficient cause shown and seeing no valid reason why the said *A. B.* should not receive such licence, do hereby grant to him this licence for the purposes aforesaid, subject nevertheless to be revoked for misconduct on the part of the said *A. B.*, as provided in the Merchant Shipping Act, 1894.

(Signatures, and authenticating seal.)

TWENTY-SECOND SCHEDULE (*b*).

(*b*) This schedule of Acts repealed (itself repealed by the S. L. R. A., 1908) included two Acts germane to the provisions set out in the text, viz., the Passengers Act, 1855, and the Merchant Shipping (Fishing Boats) Act, 1883.

THE LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895.

(58 & 59 VICT. c. 11.) (*c*)

An Act to amend the Law relating to the Taxation of Costs under the Lands Clauses Acts. [14th May 1895.]

1.—(1) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be), shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court (*d*), and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation (*e*). Fees for taxing costs in compensation inquiries and arbitrations. 8 & 9 Vict. c. 18.

(2) *Section forty-five of the Regulation of Railways Act*, 1868 (*f*), *and section one of the Lands Clauses Consolidation Act*, 1869 (*g*), *are hereby repealed.* 31 & 32 Vict. c. 119. 32 & 33 Vict. c. 18.

2. This Act may be cited as "The Lands Clauses (Taxation of Costs) Act, 1895." Short title.

THE PUBLIC WORKS LOANS ACT, 1896.

(59 & 60 VICT. c. 42.) (*h*)

An Act to grant moneys for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [14th August 1896.]

* * * * *

2. There shall be added to the works for the purpose of which the Public Works Loan Commissioners may lend in Great Britain under the Public Works Loans Act, 1875, the following works, namely,— Addition to purposes for which Public Works Loan Commissioners may lend. 38 & 39 Vict. c. 89.

Any work for which the council of a county, borough, district, or parish are authorised to borrow;

The construction or improvement of any canal;

Provided that where the repayment of a loan for the construction or improvement of a canal is collaterally secured to the satisfaction of the Public Works

(*c*) See the Lands Clauses Consolidation Act, 1845, *ante*, p. 1321, and the Acts and enactments referred to in note (*f*) on that page. Italicised words in s. 1 (2) are repealed by S. L. R. A., 1908.

(*d*) See 8 & 9 Vict. c. 18, s. 52, *ante*, p. 1335, which is thus extended to costs of arbitration. The decision of the master cannot be reviewed (*In re Sandbach Charity Trustees and North Staffordshire Rail. Co.* (1878), 3 Q. B. D. 1) (and see *Cannings, Ltd.* v. *Middlesex C. C.*, [1907] 1 K. B. 51; 71 J. P. 46), nor can it be removed by *certiorari* (*R.* v. *Goff*, [1905] 2 I. R. 121). But when the successful party has to pay the arbitrators and umpire excessive fees in order to obtain delivery of the award, he may recover back from them by action such sum as the Court thinks improperly charged, and in such action the certificate of the Taxing Master under this section is *primâ facie* evidence of the unreasonableness of the fees (*Llandrindod Wells Water Co.* v. *Hawksley* (1903), 67 J. P. 439).

(*e*) See s. 26 of the Supreme Court of Judicature Act, 1875, and Treasury Order, dated 4th July, 1884, made thereunder as to fees to be taken by stamps.

(*f*) This enactment related to the fees payable to the masters for determining questions of disputed compensation under the provisions of the Lands Clauses Consolidation Act, 1845, or of any Act incorporating, altering, or amending the same.

(*g*) This enactment corresponded to the first part of sub-s. (1) so far as it relates to the taxation of costs of arbitration.

(*h*) This Act, so far as material, extends the Public Works Loans Act, 1875, and First Schedule, *ante*, pp. 1608, 1625.

Loan Commissioners, the rate of interest on the loan may be three and a quarter per cent. per annum instead of the rate of four per cent. per annum authorised by the Public Works Loans Act, 1892.

55 & 56 Vict. c. 61, s. 2.

*   *   *   *   *

Short title.

6. This Act may be cited as "The Public Works Loans Act, 1896."

*   *   *   *   *

THE CLEANSING OF PERSONS ACT, 1897.

(60 & 61 VICT. C. 31.)

An Act to permit Local Authorities to provide Cleansing and Disinfection for Persons infested with Vermin. [6th August 1897.]

Power to local authorities to provide cleansing, etc., for persons infested with vermin.

1. (*i*) . . . any local authority shall have the power, when in their discretion they shall see fit, to permit any person (*k*) who shall apply to the said authority, on the ground that he is infested with vermin, to have the use, free of charge, of the apparatus (if any) which the authority possess for cleansing the person and his clothing from vermin. The use of such apparatus shall not be considered to be parochial relief or charitable allowance to the person using the same, or to the parent of such person, and no such person or parent shall by reason thereof be deprived of any right or privilege or be subject to any disqualification or disability (*l*).

Local authorities may expend any reasonable sum on buildings, appliances, and attendants that may be required for the carrying out of this Act, and any expenses for these purposes may be defrayed out of any rate or fund applicable by the authority for general sanitary purposes (*m*) or for the relief of the poor.

Definition.

2. In this Act "local authority" means in England the council of any county borough, the district council of any district, any board of guardians, and in the county of London any sanitary authority as defined in the Public Health (London) Act, 1891 (*i*).

54 & 55 Vict. c. 76

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Short titl

5. This Act may be cited as "The Cleansing of Persons Act, 1897."

(*i*) Immaterial words in s. 1 repealed by S. L. R. A., 1908. Sections 3 and 4 relate only to Scotland and Ireland.

(*k*) By s. 122 (3) of the Children Act, 1908, where any sanitary authority within the district of a local education authority have provided, or are entitled to use, any premises or appliances for cleansing the person or clothing of persons infested with vermin, they must, if required, allow the local education authority to use such premises and appliances for the purposes of s. 122 ("Cleansing of verminous children") in return for such payment as may be agreed, or settled by the L. G. B. in default of agreement.

(*l*) See Vaccination Act, 1867, s. 26; Municipal Corporations Act, 1882, s. 33 (4); Medical Relief Disqualification Removal Act, 1885; P. H. (London) A., 1891, s. 80 (4); and Isolation Hospitals Act, 1893, s. 23, *ante*, p. 1891.

(*m*) In a borough, out of the borough rate or fund; in an urban district other than a borough, out of the general district rate or fund (see the P. H. A., 1875, s. 207, *ante*, p. 468); and in a rural district, out of the poor rate (*ibid.*, s. 229, *ante*, p. 509).

THE DISTRICT COUNCILS (WATER SUPPLY FACILITIES) ACT, 1897.

(60 & 61 VICT. c. 44.) (*n*)

An Act for giving Facilities for a Pure Water Supply in Rural Districts.

[6th August 1897.]

Lands may be charged by owners for water supply. 27 & 28 Vict. c. 114.

1. Where any person who is a landowner within the meaning of the Improvement of Land Act, 1864 (*o*) (in this Act referred to as the principal Act), contributes any money towards the expenses incurred by a district council for the purpose of supplying water to any lands of such landowner, whether together with other lands or not, the amount so contributed may, with the sanction of the Board of Agriculture given under this Act, be charged on the land of the landowner so supplied with water in the same manner (*p*), as nearly as may be, and with the like effect as in the case of a charge under the principal Act.

Charge to be in favour of district councill

2. Where the landowner and the district council agree that the contribution shall be payable by half-yearly instalments, the charge under this Act may be granted in favour of the district council, to secure the payment to them of such contribution (*q*), and the sums payable in respect of the charge shall be in addition to any sums which may be payable for the water supply by way of water rate or water rent.

(*n*) As to this Act and its bearing on the law of public health, see s. 51 of the P. H. A., 1875, and notes thereon, *ante*, p. 117. See also the Limited Owners' Reservoirs and Water Supply Further Facilities Act, 1877, *ante*, p. 1661, and the Improvement of Land Act, 1899, s. 1 (3).

(*o*) By s. 8 of that Act, "the word 'landowner' shall mean . . . as to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, copyhold, customary, or other tenure, except where such person shall be a tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the [Board of Agriculture], without regard to the real amount of the interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this Act to be the owner of such lands; . . . and as to lands in any part of the United Kingdom, the word 'landowner' shall include a corporation, and also such persons as are empowered by the 23rd section hereof." This reference seems to be an obvious mistake for the 24th section, whereby it is provided that all husbands, guardians, committees, feoffees, trustees, executors, and administrators, shall respectively have the same rights and powers of making applications and signifying dissents and taking other proceedings under this Act as their respective wives, infants, lunatics and idiots, would have had if free from disability, or as such feoffees, trustees, executors or administrators respectively would have had if the estates or interests of which they shall be such feoffees or trustees, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but no guardian, committee, feoffee, trustee, executor or administrator, shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

(*p*) But see s. 5, *post*.

(*q*) By s. 63 of the Improvement of Land Act, 1864, every rent-charge on land by virtue of this Act may be recovered by the person or company for the time being entitled to the same as to lands in England by the same means, and with the like powers and in like manner in all respects as a rent-charge in lieu of tithes would be recoverable if charged on the same land under the Tithe Act, 1836, and the several Acts passed for amending the same, and as if such rent-charge, by virtue of this Act, were a rent-charge in lieu of tithes made payable to such person or company under the said Acts respectively.

By s. 81 of the Tithe Act, 1836, a rent-charge in lieu of tithes is recoverable by distress; and by s. 82, in default of distress by delivery of the land charged in satisfaction.

Time limit for charge.

3. A charge under this Act shall not be made for any term exceeding twenty-five years.

Sanctioning of charge by Board of Agriculture.

4. When the supply of water to the lands of the landowner will be beneficial to persons residing or engaged in labour on such lands, the Board may, if they think fit, sanction the charge, although it may not be shown that the supply of water will effect a direct yearly increase in the value of the lands or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon (*r*).

Power of Board of Agriculture to execute charge.

5. Where the annual sum to be made payable under a charge proposed to be granted by virtue of this Act in respect of the supply of water to any house or houses does not exceed the amount payable at the date of the charge for such water supply by way of water rate or water rent, the Board of Agriculture may execute the charge upon such information as they think fit to require, and in such case the requirements of the principal Act (*s*) with respect to matters and proceedings previous to the execution of a charge shall not apply.

Extent of Act.

6. This Act shall not extend to Scotland or Ireland.

Short title.

7. This Act may be cited as "The District Councils (Water Supply Facilities) Act, 1897," and shall be read with the Improvement of Land Act, 1864.

THE PUBLIC WORKS LOANS ACT, 1897.

(60 & 61 VICT. c. 51.) (*t*)

An Act to grant Moneys for the purpose of certain Local Loans, and to amend the Law respecting the Local Loans Fund and Loans made thereout, and for other purposes relating to Local Loans. [6th August 1897.]

AMENDMENT OF ACTS.

Reduction of interest on future local loans on the security of local rates.

1. The rates of interest at which loans may be made out of the Local Loans Fund on the security of local rates may be fixed by the Treasury, from time to time, having regard to the duration of the loans, and shall be such rates not less than two and three quarters per cent. per annum as in the opinion of the Treasury are sufficient to enable such loans to be made without loss to the Local Loans Fund (*u*).

* * * * *

Abolition of maximum of loan. 42 & 43 Vict. c. 77.

3. (*v*) *The limit imposed by section three of the Public Works Loans Act,* 1879, *on the amount which can be advanced by the Public Works Loan Com-*

(*r*) *Cf.* the last clause of 40 & 41 Vict. c. 31, s. 5, *ante*, p. 1662. This section alters the application of 27 & 28 Vict. c. 114, s. 25, to the cases coming within its purview.

(*s*) See 27 & 28 Vict. c. 114, ss. 11—24 inclusive, noting that ss. 17 and 18 have been repealed by the Settled Land Act, 1882, and s. 21 extended by the Improvement of Lands (Ecclesiastical Benefices) Act, 1884.

(*t*) See the Public Works Loans Act, 1875, *ante*, p. 1608.

(*u*) This provision supersedes the provisions of s. 243 of the P. H. A., 1875, repealed by s. 12 (4), and the Second Schedule of this Act. The Treasury Minute of September 9th, 1907 (see 5 L. G. R. 183), now determines the rates of interest chargeable, viz., 3½ per cent. where the period of repayment does not exceed 30 years, and 3¾ per cent. where it does not exceed 50 years. As to interest on loans under the Housing Acts, see s. 3 of the Housing, Town Planning, etc. Act, 1909, p. 1158, *ante*.

(*v*) Sections 3, 12 (4), and Schedule II. are repealed by the S. L. R. A., 1908. They repealed two provisions germane to the matter in the text, viz., s. 3 of the Public Works Loans Act, 1879, and s. 243 of the P. H. A., 1875, from "at the rate of three and a half" down to "loss to the Exchequer."

missioners under any one Act in any one year to one borrower shall be repealed (*w*).

* * * * *

MISCELLANEOUS.

12.—(1) The expression "local rate" means any rate levied or assessed, the proceeds of which are applicable to public local purposes, and which is levied on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined. Definitions, repeal, construction, and short title.

(2) The expression "security of a local rate" includes a security guaranteed by any such local rate.

(3) This Act shall be deemed to be a special Act within the meaning of the Public Works Loans Act, 1875. 38 & 39 Vict. c. 89.

(4) [*Repeal of Acts in Second Schedule.*] (*x*)

(5) This Act may be cited as "The Public Works Loans Act, 1897."

THE LOCOMOTIVES ACT, 1898.

(61 & 62 VICT. c. 29.) (*y*)

An Act to amend the Law with respect to the use of Locomotives on Highways, and withrespect to Extraordinary Traffic. [2nd August 1898.]

1.—(1) The council of a municipal borough as regards any highway situated in the borough, and the county council (*z*) as regards any highway situated in their county (*z*) but not in a borough, may permit any waggons (*z*) drawn or propelled by a locomotive (*z*) on the highway to carry weights in excess of those mentioned in section four of the Locomotive Act, 1861 (*a*). Provisions as to the weight carried by waggons. 24 & 25 Vict. c. 70.

(2) If any person without such permission uses any waggon drawn or propelled by a locomotive on any highway to carry weights in excess of those mentioned in section four of the Locomotive Act, 1861, as amended by this Act, or, being the owner of the waggon, permits it so to be used, that person shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

(3) The proviso (*b*) to section four of the Locomotive Act, 1861, is hereby repealed and in lieu thereof it is enacted as follows:

Provided that the regulation of weight herein mentioned shall not extend to any waggon carrying only one block, plate, cable, roll, vessel of stone

(*w*) This removal of the limitation imposed by s. 3 of the Public Works Loans Act, 1879, does not, of course, affect that imposed by s. 234 (2) of the P. H. A., 1875, *ante*, p. 526.

(*x*) See note (*v*), *ante*, p. 1904.

(*y*) This Act is inserted here as amending the Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 1672. See also the Locomotives on Highways Act, 1896.

(*z*) See definition, s. 17, *post*, p. 1914.

(*a*) By s. 4 of the Locomotive Act, 1861, certain restrictions are placed on the weights which may be carried on any waggon drawn or propelled by a locomotive, and the maximum weight which is allowed to be borne upon each pair of wheels is fixed at four tons, or two tons to each wheel, an addition of one-sixth to the weight upon each pair of wheels being permitted where the waggon is constructed with springs upon each axle.

By the same section it is unlawful (subject to the regulations in the Act authorised to be made by local authorities) to drive any locomotive through any city, town, or village at a greater speed than two miles an hour. But it was held that this does not apply to a locomotive which is the property of the Crown and is being used by a servant of the Crown acting in obedience to his instruction for Crown purposes (*Cooper* v. *Hawkins*, [1904] 2 K. B. 164; 68 J. P. 25).

(*b*) This proviso rendered inapplicable the restrictions above mentioned where a waggon was carrying certain specified single articles

or metal, or other single article, being of greater weight than sixteen tons, but the fellies, tires, or shoes of such waggon shall not be less than eight inches in breadth, and any damage arising from the user of any such waggon shall be deemed to be damage caused by excessive weights within the meaning of section twenty-three of the Highways and Locomotives Amendment Act, 1878, as amended by this Act.

41 & 42 Vict. c. 77.

Weight of waggons to be affixed thereon.

2. (*c*) The weight unloaded of every waggon drawn or propelled by a locomotive shall be conspicuously and legibly affixed thereon, and every owner not having affixed such weight shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds, and any owner who shall fraudulently affix thereon any incorrect weight shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

Limit to number of waggons.

3.—(1) A locomotive shall not be used on any highway to draw more than three loaded waggons (*d*) (exclusive of any waggon solely used for carrying water for the locomotive) without the consent, so far as regards highways situated in a municipal borough, of the council of the borough, and, so far as regards highways not so situated, of the county council.

(2) If any person uses a locomotive in contravention of this section, or being an owner of a locomotive permits it to be so used, that person shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

Erection and use of weighing machines.

4.—(1) Road authorities shall have power to erect in their districts machines for weighing locomotives (*e*) and loaded waggons drawn by them, and shall have power by their servants to require the persons in charge of such locomotives and waggons to proceed thither for the purpose of having such locomotives and waggons weighed: Provided that the road authority making such requirement shall pay for any loss caused by the delay if the weight should be found to be within the limits authorised by law, and that any person in charge of a locomotive who refuses or neglects to comply with any such requirement shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

(2) Where a road authority and the engine owner fail to agree as to the amount of compensation to be paid under this section, the differences between them shall be settled by arbitration under the Arbitration Act, 1889.

52 & 53 Vict. c. 49.

Where a road authority weighs locomotives and waggons under this section, a certificate of weight shall be given which shall exempt such locomotives and waggons from being weighed during the continuance of that journey.

(3) For the purposes of this section the council of any county borough and any district council may borrow under and subject to the provisions of the Public Health Act, 1875 (*f*).

38 & 39 Vict. c. 5.

(*c*) *Cf.* s. 12 of the Locomotive Act, 1861, and s. 7 of the Locomotives Act, 1865. It is not necessary that the name or residence of the owner should be affixed to the waggons. As to the liability of the owner of a locomotive who has let it out to an action for damages caused by the negligence of the hirer, see *Smith* v. *Bailey*, [1891] 2 Q. B. 403.

(*d*) Before this enactment no limit had been placed by law upon the number of waggons which might be drawn or propelled by a locomotive. See definition of "waggon" in s. 17, *post*, p. 1914. As to attendance, see s. 5 (1) (c), *infra*.

Persons using a traction engine and trucks on a highway may be indicted for a nuisance if they create a substantial obstruction and occasion inconvenience to the public greater than such as would arise from the use of carts and horses (*R.* v. *Chittenden* (1885), 49 J. P. 503; 15 Cox, C. C. 725).

(*e*) As to the limit of weight of locomotives, see s. 28 of the Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 1685. That section does not apply to light locomotives, as to which see the Locomotives on Highways Act, 1896.

(*f*) See ss. 233—244, *ante*, p. 519. Note that this sub-section does not extend to a county council who can borrow for the like purpose under s. 69 of the L. G. A., 1888, as amended by the County Councils Mortgages Act, 1909.

Regulations for locomotives passing on highways (*g*).

5.—(1) When a locomotive is passing on any highway—

(a) two persons shall be employed in driving (*h*) or attending to the locomotive; and

(b) in the case of any locomotive not being a steam roller another person shall be employed to accompany the locomotive in such a manner as to be able to give assistance to any person with horses (*i*) or carriages drawn by horses meeting or overtaking the locomotive, and shall give such assistance when required; and

(c) when a locomotive is drawing more than three waggons (*k*), another person shall be employed for the purpose of attending to the waggons.

Provided that it shall not be necessary in the case of two locomotive plough engines (*kk*) (including their necessary gear) closely following one another, to employ more than five persons in all under the foregoing enactment, but one of these persons shall be employed to accompany the engines, and give assistance in manner thereby required.

(2) So long as the fires of a locomotive are alight, or the locomotive contains in itself sufficient motive power to move it, one person shall remain in attendance while it is on any highway although it is stationary.

(3) The lights required (*l*) to be carried on a locomotive, whether stationary or passing on any highway, shall be carried between the hours of one hour after sunset and one hour before sunrise during the six months beginning the first day of April in any year, and between sunset and sunrise (*m*) during

(*g*) The regulations prescribed by this section are in addition to those prescribed by s. 3 of the Locomotives Act, 1865, s. 3 (so far as unrepealed), and those regulations are stated in note (*i*), *infra*, and are enforceable under the like penalty as that imposed by sub-s. (5) of this section. The owner is *primâ facie* made liable to the penalty, but under s. 13, *post*, so is the person in fact committing the offence, and the owner may exempt himself from the penalty on the conviction of the actual offender

But for contraventions of byelaws under s. 6, *infra*, the person in charge is made liable, not the owner under any circumstances unless actually himself in charge at the time.

This section, it will be seen, only applies to locomotives on highways. As to the erection and use of steam engines near, but not on, highways, see s. 70 of the Highway Act, 1835; s. 6 of the Locomotives Act, 1865; the Locomotive Threshing Engines Act, 1894, and *Harrison* v. *Leaper* (1862), 26 J. P. 373.

(*h*) By s. 3 of the Locomotives Act, 1865, the drivers of such locomotives shall give as much space as possible for the passing of other traffic.

(*i*) By s. 3 of the Locomotives Act, 1865, it is further provided (apparently with a view to guard against accidents with horses) that the whistle of the locomotive shall not be sounded for any purpose whatever; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road. And every locomotive shall be instantly stopped on the person preceding the same, or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require the locomotive to be stopped.

In reference to this last regulation note that there is now since the repeal of s. 29 of the Highways and Locomotives (Amendment) Act, 1878, by this Act no regulation requiring any of the persons in attendance on the locomotive while in motion to precede the locomotive by any specific distance or at all. The effect of art. 3 of the Heavy Motor Car Order, 1904, is that a vehicle propelled by mechanical power, if it is under five tons in weight unloaded, is a light locomotive within the meaning of the Locomotives on Highways Act, 1896, s. 1 (1). A person cannot therefore be convicted under this section for not having three men in attendance on the locomotive inasmuch as by s. 17 (2) of this Act nothing in this Act is to affect light locomotives within the meaning of the Act of 1896 (*Evans* v. *Nicholl*, [1909] 1 K. B. 778; 73 J. P. 154).

As to the liability of the owner of the locomotive in cases where horses damage themselves or carriages, etc., see *Jeffery* v. *St. Pancras Vestry* (1894), 63 L. J. Q. B. 618; and for personal injuries, see *Watkins* v. *Reddin* (1861), 2 F. & F. 629.

(*k*) See s 3, *ante*.

(*kk*) See *Williams* v. *Wood* (1914), 78 J. P. 221.

(*l*) By s. 3 of the Locomotives Act, 1865, the person in charge of the locomotive shall provide two efficient lights to be affixed conspicuously, one at each side, on the front of the same. This sub-section, it will be seen, also requires a red light on the rear.

(*m*) By local time, not by Greenwich mean time. See *Gordon* v. *Cann* (1899), 68 L. J. Q. B. 434; 63 J. P. 324.

the six months beginning the first day of October in any year, and there shall be carried in addition during those hours an efficient red light on the rear of the locomotive, or if it is drawing waggons on the rear of the last waggon, fixed in such a manner as to be conspicuous.

(4) Every light carried on a locomotive, or on a waggon drawn by a locomotive, shall be fitted with such shutters or other contrivances as will enable the light to be temporarily screened in an effective manner.

(5) If any of the provisions of this section are not complied with in the case of any locomotive, the owner of the locomotive shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

Restriction of locomotive traffic by byelaw (*n*).

6.—(1) The council of a county and of any borough containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, may by byelaw—

(a) prohibit or restrict the use of locomotives on any specified highway in their county or borough on account of the highway being crowded or unfitted for locomotive traffic, or of the inconvenience caused to inhabitants, or of any other reasonable cause; and

(b) regulate the use of locomotives and of waggons drawn by locomotives on any highway; and

(c) prohibit or restrict the use of a locomotive on any specified bridge in their county or borough, if they are satisfied that such bridge is unsuited for locomotive traffic, or that such use would be attended with damage to the bridge (*o*) or danger to the public.

Provided that the council of any such county or borough may, where their byelaw prohibits the use of locomotives on any highway, give special authority for the use of a locomotive on the highway, if in any case it appears necessary for the purpose of the delivery of goods or for any other particular

(*n*) This section takes the place of s. 31 of the Highways and Locomotives (Amendment) Act, 1878, repealed by this Act, but as to byelaws made under the repealed enactment, see s. 18 (2), *post*, p. 1915. In *Cadenhead* v. *Smart* (1895), 22 Ct. of Sess. Cas. (4th ser.) (J. C.) 1, it was held under the Scotch enactments corresponding to that enactment that a byelaw prohibiting any waggon attached to any locomotive for carrying more than five tons weight over and above the weight of the waggon from being on any road within the district of the road authority, except on leave granted after special application to the road surveyor, was *ultra vires*, on the ground that the Act of 1878 was passed for enabling authorities to deal with particular cases on their merits, and not to issue general regulations closing every road and every bridge within the district to locomotive traffic which was permissible under the Act of 1861.

Light locomotives were exempted from the operation of s. 31 of the Act of 1878, by the Locomotives on Highways Act, 1896. As to byelaws applicable to such locomotives, see s. 1 (1) (a) of that Act.

Byelaws made under the present section may vary the limits of speed laid down by s. 4 of the Locomotives Act, 1865. See as to that section, *L. & S. W. Rail. Co.* v. *Myers* (1881), 45 J. P. 731.

As to the non-liability of the Crown, see *Cooper* v. *Hawkins*, *ante*, p. 1905.

The provisions of this section do not affect or destroy the common law liability of a person using a locomotive upon a highway to abstain from using it so as to create a public nuisance. As to how far it is a defence to an action for an injunction to restrain a nuisance that the nuisance was caused by the neglect of the authority to fulfil their duty to keep the road in repair, see *Att.-Gen.* v. *Scott* (No. 1), [1904] 1 K. B. 404; 68 J. P. 137. But in order to maintain such an action it must be proved that the nuisance was in fact due to the user of the locomotive (*Att.-Gen.* v. *Scott* (No. 2), [1905] 2 K. B. 160; 69 J. P. 109). See also *Cavan C. C. and Bailieborough R. D. C.* v. *Kane Brothers* [1913] 2 I. R. 250. If by the use of an exceptionally heavy locomotive on the highway damage is done to water mains sufficiently strong and well laid to withstand the pressure of the ordinary traffic of the district, the owner of the locomotive is liable for the damage (*Chichester Corporation* v. *Foster*, [1906] 1 K. B. 167; 70 J. P. 73).

(*o*) As to the liability of the owner of the locomotive for damage to any bridge, see s. 7 of the Locomotive Act, 1861. That section, however, does not extend to county bridges (*R.* v. *Kitchener* (1874), L. R. 2 C. C. R. 88). In the case of damage to a county bridge, if there is any remedy against the owner of the locomotive, it may be by action or by proceedings under the Bridges Act, 1803, or by *mandamus*.

purpose. Provided also that the council of any such county or borough shall not give any such special authority for the use of a locomotive on any bridge except with the consent of the person liable to the repair of such bridge, and the council of any such county or borough may with such consent give such special authority subject to payment being made by the person applying for such special authority to the person liable to the repair of such bridge of the cost of temporarily strengthening such bridge on each occasion of such use.

(2) If any person in charge of a locomotive (*p*) acts in contravention of any byelaw under this section, and without any such special authority, he shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds.

(3) Any byelaw made under this section shall be subject to confirmation by the Local Government Board, and sections one hundred and eighty-four, one hundred and eighty-five, and one hundred and eighty six of the Public Health Act, 1875 (which relate to the confirmation, printing, and evidence of byelaws) (*q*), shall accordingly apply to any byelaws under this section as they apply to byelaws made by a local authority under that Act. Provided that, in addition to the notice of intention to apply for confirmation of any byelaw which is required by section one hundred and eighty-four of the said Act, notice of such intention shall in the case of any byelaw made under this section be given in the London Gazette one month at least before making the application. 38 & 39 Vict. c. 55

(4) The Local Government Board in connexion with the confirmation of any byelaw under this section shall have all proper regard to the necessities of through locomotive traffic, and of persons who own or use locomotives, and shall consider any representations made to them by any local authority concerned, and shall also have regard to the advantage of byelaws being uniform in adjoining areas except where uniformity is, in their opinion, made inexpedient by difference in the circumstances of the areas (*r*).

(5) The mayor, aldermen, and commons of the city of London may make byelaws under this section as to the city of London in the same manner as the council of a borough.

(6) For the purpose of byelaws under this section, a borough, the council of which may make such byelaws, shall not form part of the administrative county in which it is situate.

Appeal against restrictions on passing over bridges.

7.—(1) Where the owner of a locomotive is aggrieved by any restriction or prohibition placed, either before or after the passing of this Act, on the passing of locomotives over any bridge (*s*), either under section six of the Locomotive Act, 1861 (*t*), or under any byelaw made under this Act, or any 24 & 25 Vict. c. 70.

(*p*) Note that the person in charge is the proper person to be summoned for a breach of byelaws under this section, and not the owner of the locomotive, unless he was at the time himself in charge.

(*q*) *Ante*, pp. 440—445.

(*r*) In order that the L. G. B. may comply with these statutory directions it is necessary that they should have before them at the same time the byelaws which are proposed to be made for adjoining areas. They are desirous that the byelaws should be sent to them in draft before they are formally adopted by the council, and before the requirements of the Act as to notices are complied with. It will be convenient if they are written on foolscap paper, and on one side. A half-margin should be left for annotations and alterations.

(*s*) Except the Menai Bridge. See s. 16, *post*. As to light locomotives on the Menai Bridge, see the Light Locomotives (Menai Bridge) Order, 1897 (Stat. R. & O., 1897, p. 452). The Act does not expressly apply to a "culvert," though it is sometimes difficult to distinguish between a bridge and a culvert.

(*t*) Section 6 of the Locomotive Act, 1861, prohibits the owner or driver of a locomotive from driving it over a suspension bridge, or over any bridge on which a conspicuous notice has been placed by the authority of the surveyor or persons liable to the repair

enactment repealed by this Act, that owner may appeal to the Local Government Board, and that Board, if they consider that the bridge is sufficient to bear the weight of locomotives, and that there is no other reasonable cause for imposing the restriction or prohibition, may order the restriction or prohibition to be removed, or, if they consider that it may reasonably be varied in any respect, to be varied.

(2) The authority by whom a restriction or prohibition has been imposed shall comply within a time to be specified in the order with any order of the Local Government Board made under this section.

(3) The Local Government Board may determine any appeal under this section either as arbitrators or otherwise at their option, and, where they determine any such appeal as arbitrators, section sixty-three of the Local Government Act, 1888, as amended by the Local Government (Determination of Differences) Act, 1896 (*u*), shall apply for the purpose.

51 & 52 Vict. c. 41.
59 & 60 Vict. c. 9.

(4) An order of the Local Government Board under this section with regard to any bridge shall not prevent the imposition of any restriction or prohibition with regard to the bridge at a future time, if the authority having power to impose the restriction or prohibition consider that it is necessary to do so, having regard to any change in the circumstances of the bridge or the traffic, but the imposition of any such restriction or prohibition shall be subject to appeal under this section.

(5) The Local Government Board may refuse to consider any appeal under this section with regard to any bridge if the question raised by the appeal has been already considered by them either on the confirmation of a byelaw or under a former appeal.

(6) In the case of any bridge which a railway company is liable to repair, the Board of Trade shall be substituted for the Local Government Board, and this section shall be read and construed accordingly.

Locomotives not to meet on a bridge.

8. No locomotive shall be taken across any bridge so as to meet or pass any other locomotive upon such bridge, and any person who acts in contravention of this section shall be subject, on summary conviction, to a penalty not exceeding five pounds for every offence.

Licences for locomotives (*v*).

9.—(1) Every locomotive shall be licensed by a county council, provided that this enactment shall not apply to any agricultural locomotive (*x*), to any locomotive not used for haulage purposes, to any steam roller, or to any locomotive belonging to a road authority when used by them within their district (*y*).

(2) The licence shall be taken out in the county in which the locomotive is at the time ordinarily used, or to be used (*z*), and shall remain in force for one year from the date on which it is granted and no longer: Provided that

of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of the surveyor of the road, or the bridgemaster in charge of the bridge, or of the persons liable to the repair of the bridge. As to the extent of the liability of a canal company at the present day in respect to a bridge built many years ago, see *Att.-Gen.* v. *Sharpness New Docks and Gloucester and Birmingham Canal Co.* (1914), 78 J. P. 201; and as to a railway company, see *Att.-Gen.* v. *G. N. Rail. Co.* (1914), 137 L. T. Jo. 112; *Lloyd* v. *Ross*, [1913] 2 K. B. 332.

(*u*) *Ante*, pp. 1073, 1074.

(*v*) This section supersedes the provisions formerly made by s. 32 of the Highways and Locomotives (Amendment) Act, 1878, with respect to the licensing of locomotives, and that section is now repealed by this Act.

(*x*) Defined by s. 17 (1), *post*.

(*y*) It seems from this that a road authority need not take out a licence for a steam roller, even though they let out such roller to be used in a neighbouring district, but if the roller is so let out it must be registered under s. 10, *infra*.

(*z*) Under s. 32 of the Act of 1877 the words "used within the county" were held to include travelling through the county for user in road-making in another county (*London C. C.* v. *Wood* (1897), 66 L. J. Q. B. 712; 61 J. P. 567).

if any question arises as to the county in which a licence is to be taken out under this section, such question shall be determined by agreement between the chairmen (*a*) of the councils of the counties concerned, or in case of their failing to agree by an arbitrator appointed by them, or in their default by the Local Government Board.

(3) The council of a county shall (*b*) grant a licence under this section on the payment of a fee not exceeding ten pounds if the weight of the locomotive (exclusive of water and coal) is not more than ten tons, with an addition not exceeding two pounds for every ton or fraction of a ton by which that weight exceeds ten tons in the case of a locomotive exceeding that weight.

(4) The council of a county shall on the grant of a licence provide the person to whom the licence is granted with a licence plate, having marked upon it the date and number of the licence and the name of the council by which it is granted.

(5) The licence plate shall be fixed in a conspicuous position to the locomotive in respect of which it is provided, and shall not be removed, whilst the licence is in force, without the consent of the council by whom the licence has been granted.

(6) A licence may, with the consent of the council by which it has been granted, be transferred from one locomotive to another locomotive belonging to the same owner.

(7) Where a locomotive is licensed in accordance with this section in any county, an additional licence may be taken out in any other county in the same manner and subject to the same provisions as in the case of the original licence, except that such additional licence shall expire on the same date as the original licence, and except that with regard to the payment to be made for licences a fee not exceeding five pounds shall be substituted for a fee not exceeding ten pounds, and an addition not exceeding one pound for an addition not exceeding two pounds.

(8) A locomotive in respect of which such an additiona licence granted under this section by the council of any county is in force shall for the purpose of the use of the locomotive in that county be deemed to be licensed in that county.

(9) A locomotive shall not be used on any highway in a county in which it is not licensed, except on payment to the council of the county of a fee not exceeding two shillings and sixpence for each day on which it is so used.

(10) If any person—

(a) uses on any highway a locomotive which is required to be, but is not, licensed in accordance with this section; or

(b) uses a locomotive on any highway in a county in which the locomotive is not licensed without payment of the fee required by this section; or

(c) fails to affix the licence plate to a locomotive in accordance with this section, or removes it in contravention thereof,

that person shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

(11) Any sums received on account of fees under this section, shall be carried to the council fund.

10.—(1) All locomotives not required to be licensed under this Act shall be registered in the county in which they are ordinarily used or to be used in such manner as the county county may direct. Agricultural locomotives and steam rollers.

(*a*) Defined by s. 17 (1), *post*.

(*b*) A county council has no discretion to refuse a licence to any locomotive which does not contravene any statutory provision or byelaw, provided the fee is forthcoming (*R.* v. *Middlesex C. C.*, Times, November 2nd, 1898).

(2) The county council may charge such a fee not exceeding two shillings and sixpence for registration under this section as they think fit, and on registration shall provide the person applying for registration with a plate with the registered number marked upon it.

(3) The plate shall be fixed in a conspicuous position to the locomotive in respect of which it is provided, and shall not be removed without the consent of the council by whom the locomotive is registered.

(4) If any person—

(a) uses on any highway a locomotive which is required to be but is not registered in accordance with this section; or

(b) fails to affix the registration plate in accordance with this section, or removes it in contravention thereof,

that person shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds.

(5) Any sums received on account of fees for registration under this section shall be carried to the county fund.

(6) This section shall not apply in the case of the use by any road authority of steam rollers belonging to them within their district (*c*).

Penalty for forging licence or registration plate.

11. Every person who shall forge, counterfeit, or tamper with, or who shall cause or procure to be forged, counterfeited, or tampered with, any licence plate, or registration plate, or who shall knowingly use any locomotive having thereon a licence plate or registration plate which has been forged, counterfeited, or tampered with, shall be liable, on summary conviction, to pay a fine not exceeding twenty pounds.

Amendments as to proceedings for extraordinary traffic damage.

12.—(1) Section twenty-three of the Highways and Locomotives (Amendment) Act, 1878 (*d*) (which relates to the recovery of expenses of extraordinary traffic) (*d*), shall be amended as follows:—

(a) Expenses under that section shall cease to be recoverable in a summary manner, but may be recovered if not exceeding two hundred and fifty pounds in the county court, and if exceeding that sum in the High Court (*e*).

(b) Proceedings for the recovery of any expenses incurred after the passing of this Act shall be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work (*f*).

(*c*) But a steam roller lent or hired for use in a neighbouring district must be registered.

(*d*) *Ante*, p. 1677. Reference should be made to the notes to that section.

(*e*) Although less than £250 is recovered in an action brought in the High Court, the judge may certify for costs on the High Court scale (*Chesterfield R. D. C.* v. *Newton*, [1904] 1 K. B. 62; 68 J. P. 33). An action lies in the county court to recover expenses of extraordinary traffic not exceeding £250 caused by light locomotives within the meaning of s. 1 of the Locomotives on Highways Act, 1896, as extended by the Heavy Motor Car Order, 1904 (*R.* v. *Judge James and Midland Rail. Co., ex parte Bath R. D. C.*, [1908] 1 K. B. 958; 72 J. P. 67).

(*f*) When the expenses were recoverable in a summary manner the limitation under s. 11 of the S. J. A., 1848, was applicable; but the time ran from the date of the surveyor's certificate (*Pool and Forden Highway Board* v. *Gunning* (1882), 51 L. J. M. C. 49; 46 J. P. 708), which might be given at any time, and comprise expenditure incurred over any number of years previous. See *Whitebread* v. *Sevenoaks Highway Board*, [1892] 1 Q. B. 8; 56 J. P. 214. But this enactment now alters the effect of that decision. It would seem, however, that notwithstanding this enactment, the decision in *Story* v. *Sheard*, [1892] 2 Q. B. 515; 56 J. P. 760, is still applicable, and that no proceedings can be taken against the executor of the person by or in consequence of whose order the traffic was conducted.

The "completion of the contract" means its completion so far as relates to the work causing the damage which gives rise to the action, not the completion of the contract as

(c) There shall be substituted for the words "by whose order" the words "by or in consequence of whose order" (*g*).

(2) [*Saving for proceedings already commenced.*]

13.—(1) Where an offence under any Act or byelaw relating to locomotives on highways, for which the owner of a locomotive or waggon is liable to a penalty, has, in fact, been committed by some servant, workman, or other person, that servant, workman, or other person shall be liable to the same penalty as if he were the owner.

Power of owner of locomotive to exempt himself from fine on the conviction of the actual offender.

(2) Where the owner is charged with any such offence, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the owner proves to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the other person had committed the offence in question without the owner's knowledge, consent, or connivance, that other person shall be summarily convicted of the offence, and the owner shall be exempt from any fine (*h*).

14. For the purposes of this Act (*i*) the council of a county or borough may act through their surveyor or other authorized officer.

Action of county councils.

between the parties (*Lancaster R. D. C.* v. *Fisher and Lefanu*, [1907] 2 K. B. 516; 71 J. P. 401). Where, therefore, in the case of a contract for the construction of a watertight reservoir, a county court judge found as a fact that the contract was completed not at the date when the water was first let into the reservoir, but at the date when the reservoir was finally rendered watertight, and the action to recover the expenses occasioned by the extraordinary traffic was brought within six months of the latter date, the Court of Appeal held that the whole of such expenses were recoverable at whatever date the damage was caused (*Reigate R. D. C.* v. *Sutton District Water Co.* (1909), 78 L. J. K. B. 315; 73 J. P. 161). The words "building contract" mean the contract for the building of any physical construction and the term "completion of the contract" means completion so far as concerns the constructional work comprised therein (*Carlisle R. D. C.* v. *Carlisle Corporation*, [1909] 1 K. B. 471; 73 J. P. 121, the facts of which are set out, *ante*, p. 1600). No action can be brought in any case until the expenses alleged to be extraordinary have been actually incurred (*Little Hulton U. D. C.* v. *Jackson* (1904), 2 L. G. R. 986; 68 J. P. 451).

As to the meaning of "particular work extending over a long period," see cases cited, *ante*, p. 1680, and particularly *Norfolk C. C.* v. *Green* (1904), 68 J. P. 223; 90 L. T. 451; and *Bromley R. D. C.* v. *Croydon Corporation*, [1908] 1 K. B. 353; 72 J. P. 17.

The Public Authorities Protection Act, 1893, does not apply to an action brought under this section against a public authority to recover expenses of extraordinary traffic, for which the public authority is responsible, where the damage has been done by persons under a contract with the public authority to haul stones for a scheme of public improvement which is being carried out by the public authority (*Kent C. C.* v. *Folkestone Corporation*, [1905] 1 K. B. 620; 69 J. P. 125).

(*g*) See judgment of Lopes, L.J., in *Kent C. C.* v. *Lord Gerard*, [1897] 1 Q. B. 351; 61 J. P. 67. The effect of this enactment seems to be to alter the law, so as to make it in accordance with the views of the learned Lord Justice. In *Bromley R. D. C.* v. *Croydon Corporation*, *supra*, a municipal corporation requiring road material for the general purposes of the maintenance and construction of roads within their district, entered into contracts with two contractors, whereby the contractors agreed to supply and deliver to the corporation during the twelve months from March 31st, 1904, to March 31st, 1905, flints and ragstone, in such quantities and numbers at such times, and in such manner as the corporation should from time to time by order in writing direct. *Held* that the traffic caused by haulage of the stones was in consequence of the orders of the corporation. See also *Reigate R. D. C.* v. *Sutton District Water Co.* (1907) 71 J. P. 405; *Kent C. C.* v. *Kent Coal Concessions, Ltd.* (1909), 73 J. P. 305; 25 T. L. R. 479; *Windlesham U. D. C.* v. *Seward* (1913), 77 J. P. 161.

(*h*) Compare ss. 140 and 141 of the Factory and Workshop Act, 1901, *post*, p. 2010, and s. 5 of the Margarine Act, 1887, *ante*, p. 1801. But it is doubful whether the actual offender can be made liable to pay costs incidental to the proceeding, there being no enactment to that effect in this Act in terms similar to those of s. 141 (1) (b) of the Factory and Workshop Act, 1901.

(*i*) To give permission under s. 1, or consent under s. 3, or possibly also, special authority under s. 6; but surely not to make byelaws under s. 6 or grant licences under s. 9.

Inquiries by inspectors of Local Government Board.

15.—(1) The Local Government Board may direct any inquiries to be held by their inspectors which they may deem necessary in regard to the exercise of any of their powers under this Act, and the Board and their inspectors shall for the purposes of any such inquiry have the same powers as they respectively have for the purpose of an inquiry under the Public Health Act, 1875 (*k*).

(2) The expenses incurred by the Local Government Board in respect of inquiries under this Act shall be paid by such authorities and persons, and out of such funds and rates as the Board may by order direct, and the Board may certify the amount of the expenses so incurred, and any sum so certified and directed by the Board to be paid by any authority or person shall be a debt from that authority or person to the Crown (*l*).

(3) Such expenses may include the salary of any inspector or officer of the Board engaged in the inquiry, not exceeding three guineas a day.

For the protection of the Menai Bridge.

16. No locomotive to which this Act applies shall be driven over the Menai Bridge when prohibited by notice exhibited thereon by the authority of the Commissioners of her Majesty's Works and Public Buildings, and nothing in section seven of this Act shall have any application to such bridge.

If any person in charge of a locomotive acts in contravention of this section, he shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds.

Interpretation and saving.

17.—(1) In this Act, unless the context otherwise requires,—

The expression "county" means an administrative county, and includes a county borough;

The expressions "council of a county" and "county council" include the council of a county borough;

In the case of a county borough the expression "chairman" includes the mayor, and the expression "county fund" includes borough fund;

The expression "locomotive" means a locomotive propelled by steam or other than animal power (*ll*);

The expression "waggon" includes any truck, cart, carriage, or other vehicle;

The expression "agricultural locomotive" (*m*) includes—

(a) any locomotive used solely for threshing, ploughing, or any other agricultural purpose; and

(b) any locomotive, the property of one or more owners or occupiers of agricultural land employed solely for the purposes of their farms, and not let out on hire.

59 & 60 Vict. c. 36.

(2) Nothing in this Act shall affect light locomotives within the meaning of the Locomotives of Highways Act, 1896 (*n*).

(*k*) See s. 296, *ante*, p. 625. Also ss. 20 and 21 of the Poor Law Board Act, 1847.

(*l*) Compare s. 294 of the P. H. A., 1875, *ante*, p. 623. The remedy will apparently be by action, by the Attorney-General, in the name of the Crown, asking for a *mandamus*.

(*ll*) See *Waters* v. *Eddison Steam Rolling Co.* (1914), 30 T. L. R. 587.

(*m*) This definition gets rid of the difficulties which gave rise to *Murch* v. *Baker* (1891), 55 J. P. 583, and *Ellis* v. *Hulse* (1889), 23 Q. B. D. 24; 53 J. P. 598. A threshing engine was let out on hire to a farmer to thresh wheat and to haul the wheat when threshed in trucks to a mill. It was held that the engine when being used to haul the wheat to the mill was not being used for an agricultural purpose, and was therefore at the time not an agricultural locomotive (*Hoddell* v. *Parker* [1910], 2 K. B. 323; 74 J. P. 315). A motor traction-engine used for hauling to market trollies laden with vegetables is employed for the purposes of a farm and is therefore an "agricultural locomotive" if used solely for such purpose (*London C. C.* v. *Lee* (1914), 30 T. L. R. 525).

(*n*) This means that nothing in this Act is to affect light locomotives as distinguished from other vehicles, but it does not mean that light locomotives as far as they have characteristics in common with other vehicles (one of which is that they may cause extraordinary traffic) are not to be dealt with by the new procedure under s. 12 (1), *ante*, *R.* v. *Judge James and Midland Rail. Co., ex parte Bath R. D. C.*, [1908] 1 K. B. 958; 72 J. P. 67. And see *Evans* v. *Nicholl*, *ante*, p. 1907.

(3) The mayor, aldermen, and commons of the city of London shall have the same powers with regard to the licensing and registration of locomotives in the city of London as the council of a county have in their county, and shall apply as part of their income any fees or other money received in connection with such powers.

18. [*Repeal of Acts in schedule*] (*o*).

(2) Provided that such repeal shall not affect any byelaws made under any enactment mentioned in the said schedule, so far as the same relate to preventing the use of locomotives upon bridges, *or for a period of twelve months from the passing of this Act any other byelaws made under any such enactment* (*o*), except so far as the same may be repealed or altered by byelaws made under this Act. Repeal.

(3) Nothing in this Act shall affect or derogate from the provisions of any local Act dealing with the licensing of locomotives (whatever the payments in respect of the licence may be) or otherwise relating to locomotives in any borough or other area.

19. This Act may be cited as "The Locomotives Act, 1898." Short title.

20. This Act shall not apply to Scotland or Ireland. Application of Act.

21. [*Commencement of Act.*] *This Act shall not, except so far as regards the making and confirming of byelaws hereunder, come into operation until the first of January, one thousand eight hundred and ninety-nine* (*o*).

SCHEDULE (*p*).

Repeals.

THE RIVERS POLLUTION PREVENTION (BORDER COUNCILS) ACT, 1898.

(61 & 62 Vict. c. 34.) (*p*)

An Act to enable the County Councils on either side of the Border to act together for the Prevention of the Pollution of Rivers. [2nd August 1898.]

1. Where a river or tributary thereof is situate partly in England and partly in Scotland (*q*), the Local Government Board for England and the Secretary for Scotland, by Provisional Order made on the application of the council of any of the counties concerned, may together constitute a joint committee or other body representing all or any of the counties through or by which such river or any specified portion or tributary thereof passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order; and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the counties represented by it, and for the audit of the accounts of such committee or body and their officers. Provision for enforcement of 39 & 40 Vict. c. 75 in Border counties. 39 & 40 Vict. c. 75.

(*o*) Sections 18 (1), 21, italicised words in s. 18 (2), and Schedule repealed by S. L. R.A., 1908.

(*p*) See the Rivers Pollution Prevention Acts, 1876 and 1893, *ante*, pp. 1645, 1882.

(*q*) As to rivers wholly in England, see L. G. A., 1888, s. 14 (2), *ante*, p. 750.

Application of 38 & 39 Vict. c. 55, s. 297.

2. Section two hundred and ninety-seven of the Public Health Act, 1875 (*r*) (which relates to the making of Provisional Orders by the Local Government Board) shall apply for the purposes of this Act as if the same was herein re-enacted, and in terms made applicable thereto, but with the substitution for the words " Local Government Board " of the words " Local Government Board for England and Secretary for Scotland."

Interpretation of " county." 52 & 53 Vict. c. 50.

3. In this Act the term " county " means, as regards England, an administrative county (*s*), and includes a county borough (*t*), and means, as regards Scotland, a county or burgh as defined by the Local Government (Scotland) Act, 1889.

Short title.

4. This Act may be cited as the " Rivers Pollution Prevention (Border Councils) Act, 1898."

THE LIBRARIES OFFENCES ACT, 1898.

(61 & 62 VICT. c. 53.) (*u*)

An Act to provide for the Punishment of Offences in Libraries.

[12th August 1898.]

Short title.

1. This Act may be cited as " The Libraries Offences Act, 1898."

Penalty for offences.

2. Any person who, in any library or reading-room to which this Act applies, to the annoyance or disturbance of any person using the same,—

(1) behaves in a disorderly manner ;

(2) uses violent, abusive, or obscene language ;

(3) bets or gambles ;

(4) or who, after proper warning, persists in remaining therein beyond the hours fixed for the closing of such library or reading-room,

shall be liable on summary conviction to a penalty not exceeding forty shillings.

Application of Act. 56 & 57 Vict. c. 39.

3. This Act shall apply—

(a) to any library (*x*) under the Public Libraries Act, 1892 ; and

(*r*) *Ante*, p. 626.

(*s*) Defined by the L. G. A., 1888, s. 100, *ante*, p. 782.

(*t*) See L. G. A., 1888, s. 31, *ante*, p. 759.

(*u*) See the Public Libraries Act, 1892, *ante*, p. 1870. By s. 15 of that Act, *ante*, p. 1875, the general management, regulation, and control of libraries under that Act was vested in the library authority, but there was no power to enforce their regulations by any penalty except, perhaps, by expulsion or exclusion from the library. Actual breach of the peace in a library was, and still is, punishable in the ordinary way. It is doubtful, however, whether a library is a public place within the meaning of s. 12 of the Licensing Act, 1872, as to drunk and disorderly persons. Profane swearing, whether in a library or not, would be punishable under the Profane Oaths Act, 1745. Obscene language might be punishable in some cases under byelaws (*Mantle* v. *Jordan*, [1897] 1 Q. B. 248 ; 61 J. P. 119 ; *Brabham* v. *Wookey* (1902), 18 T. L. R. 99 ; *Airton* v. *Scott* (1909), 100 L. T. 393 ; 73 J. P. 148). A library is probably not a "public place" or "place of public resort" within the meaning of the Vagrancy Act, 1824, s. 4 (as to indecent exhibitions or exposure), nor an "open and public place" within the Vagrant Act Amendment Act, 1873, s. 3 (as to gaming in a public place). See *Langrish* v. *Archer* (1883), 10 Q. B. D. 44 ; 47 J. P. 295. And, of course, apart from this Act, remaining in a library after closing hours was a mere trespass, unless some unlawful purpose, sufficient to bring the case within s. 4 of the Vagrancy Act, 1824, could be proved, as to which, see *Haynes* or *Hayes* v. *Stephenson* (1861), 25 J. P. 329 ; 3 L. T. 296.

(*x*) The application of this Act is extended by the Public Libraries Act, 1901, s. 4, *infra*, to any museum, art gallery, or school, provided under the Public Libraries Act, 1892, s. 11, *ante*, p. 1873.

(b) to any library or reading-room maintained by a society registered under the Industrial and Provident Societies Act, 1893, or under the Friendly Societies Act, 1896, or by any registered trade union. 59 & 60 Vict. c. 25.

Extent of Act.

4. This Act shall not apply to Scotland or Ireland.

THE ELECTRIC LIGHTING (CLAUSES) ACT, 1899.

(62 & 63 VICT. c. 19.) (*y*)

An Act for incorporating in one Act certain provisions usually contained in Provisional Orders under the Acts relating to Electric Lighting.

[9th August 1899.]

Provisions in Schedule to be incorporated in Electric Lighting Orders.

1. The provisions (*z*) contained in the Schedule to this Act shall be incorporated with and form part of every provisional order made by the Board of Trade after the commencement of this Act under the Electric Lighting Acts, save so far as they are expressly varied or excepted by the order, and shall, subject to any such variations or exceptions, apply, so far as applicable, to the undertaking authorised by the order.

The said provisions shall also, with the necessary modifications, and in particular with the substitution of the words "special Act" for "special order," be incorporated with any special Act, save so far as they are expressly varied or excepted thereby.

The expression "Electric Lighting Acts" means in this Act the Electric Lighting Acts, 1882 and 1888, and, so far as respects Scotland, the Electric Lighting Acts, 1882 and 1888, and the Electric Lighting (Scotland) Act, 1890. 45 & 46 Vict. c. 56. 51 & 52 Vict. c. 12. 53 & 54 Vict. c. 13.

The expression "special Act" means in this Act any Act passed after the commencement of this Act authorising the supply of electricity for any public or private purposes within any area.

Short title, extent, and commencement.

2.—(1) This Act may be cited as "The Electric Lighting (Clauses) Act, 1899."

(2) Except so far as any of the provisions contained in the Schedule to this Act are incorporated with any provisional order made by the Board of Trade under the Electric Lighting Acts extending to the county of London, or with any special Acts so extending, this Act shall not apply to the county of London.

(3) This Act shall come into operation on the first day of October, one thousand eight hundred and ninety-nine.

SCHEDULE.

Interpretation.

1. The provisions of this Schedule are to be read and construed subject in all respects to the provisions of the Electric Lighting Acts, and of any other Acts or parts of Acts incorporated therewith, and those Acts and parts of Acts are in this Schedule collectively referred to as "the principal Act"; and the several words, terms, and expressions to which by the principal Act meanings are assigned, shall have in this Schedule the same respective meanings, provided that in this Schedule—

The expression "the special order" means any provisional order made by the Board of Trade under the principal Act with which the provisions of this Schedule are incorporated and includes those provisions as so incorporated:

The expression "energy means electrical energy, and for the purposes

(*y*) See the Electric Lighting Acts, 1882 and 1888, *ante*, pp. 1736, 1806.
(*z*) See note to 45 & 46 Vict. c. 56, s. 6, *ante*, p. 1739.

of applying the provisions of the principal Act to the special order electrical energy shall be deemed to be an agency within the meaning of electricity as defined in the Electric Lighting Act, 1882 (*a*):

The expression "power" means electrical power or the rate per unit of time at which energy is supplied:

The expression "main" means any electric line which may be laid down by the undertakers in any street or public place, and through which energy may be supplied or intended to be supplied by the undertakers for the purposes of general supply:

The expression "service line" means any electric line through which energy may be supplied or intended to be supplied by the undertakers to a consumer either from any main or directly from the premises of the undertakers:

The expression "distributing main" means the portion of any main which is used for the purpose of giving origin to service lines for the purposes of general supply:

The expression "general supply" means the general supply of energy to ordinary consumers, and includes, unless otherwise specially agreed with the local authority, the general supply of energy to the public lamps, where the local authority are not themselves the undertakers, but shall not include the supply of energy to any one or more particular consumers under special agreement:

The expression "area of supply" means the area within which the undertakers are, for the time being, authorised to supply energy under the special order:

The expression "county council" means the county council of the county in which the area of supply is situated:

The expression "consumer" means any body or person supplied or entitled to be supplied with energy by the undertakers:

The expression "consumer's terminals" means the ends of the electric lines situate upon any consumer's premises and belonging to him, at which the supply of energy is delivered from the service lines:

41 & 42 Vict. . 76 The expression "telegraphic line," when used with respect to any telegraphic line of the Postmaster-General, has the same meaning as in the Telegraph Act, 1878 (*b*), and any such telegraphic line shall be deemed to be injuriously affected where telegraphic communication by means of that line is, whether through induction or otherwise, in any manner affected:

The expression "railway" includes any tramroad, that is to say, any tramway other than a tramway as hereinafter defined:

The expression "tramway" means any tramway laid along any street:

The expression "daily penalty" means a penalty for each day on which any offence is continued after conviction therefor:

The expression "Board of Trade regulations" means any regulations or conditions affecting the undertaking made by the Board of Trade under the principal Act or the special order, for securing the safety of the public or for insuring a proper and sufficient supply of energy:

The expression "deposited map" means the map of the area of supply deposited at the Board of Trade by the undertakers together with the special order, and signed by an assistant secretary to the Board of Trade:

The expression "plan" means a drawn plan to a horizontal scale of at least one inch to eighty-eight feet, and where possible a section drawn to the same horizontal scale as the plan and to a vertical scale of at least one inch to eleven feet, or to such other scale as the Board of Trade may approve of for both plan and section, together with such detail plan and sections as may be necessary.

(*a*) See 45 & 46 Vict. c. 56, s. 32, *ante*, p. 1750.

(*b*) By s. 2 of the Telegraph Act, 1878, the expression "telegraphic line" means telegraphs, posts, and any work within the meaning of the Telegraph Act, 1863, and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication, and includes any portion of a telegraphic line as defined by this Act. By s. 3 of the Telegraph Act, 1863, the term "work" includes telegraphs and posts.

PROVISIONS AS TO UNDERTAKERS.

Description of undertakers.

2.—(1) The undertakers shall be the authority, company, or other person named for that purpose in the special order.

(2) If, in a case where the undertakers are not the local authority, the undertaking or any part thereof is at any time purchased by the local authority in accordance with the special order or the principal Act the local authority shall from the date on which the purchase takes effect be the undertakers in relation to the undertaking or part thereof for the purposes of the special order in lieu of the persons mentioned therein as undertakers

Undertakers not to purchase other undertakings.

3.—(1) The undertakers shall not purchase or acquire the undertaking of or associate (*c*) themselves with any company or person supplying energy under any licence, provisional order, or special Act, unless the undertakers are authorised by Parliament to do so (*d*).

(2) If in contravention of this section the undertakers purchase or acquire any such undertaking, or associate (*c*) themselves with any such other company or person, the Board of Trade may, if they think fit, revoke the special order upon such terms as they think just.

AREA OF SUPPLY.

Area of supply and prohibition of supply beyond area.

4.—(1) The area of supply shall be the area named for that purpose in the special order.

(2) The undertakers shall not at any time after the commencement of the special order supply energy or (except for the purposes of that order) erect or lay down any electric lines or works beyond the area of supply otherwise than under the authority of Parliament, or under a licence granted by the Board of Trade under the principal Act (*e*).

(3) If the undertakers supply energy or erect or lay down electric lines or works in contravention of this section, the Board of Trade may, if they think fit, revoke the special order on such terms as they think just (*f*).

SECURITY AND ACCOUNTS (*g*).

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APPLICATION OF MONEY AND PURCHASE OF LAND, ETC., BY LOCAL AUTHORITY.

Application of money received by local authority as undertakers.

7. Where a local authority are the undertakers the following provisions shall have effect:—

(1) All moneys received by the undertakers in respect of the undertaking except (a) borrowed money, (b) money arising from the disposal of land acquired for the purposes of the special order, and (c) other capital money

(*c*) This prohibition against "association" does not prohibit undertakers from taking a supply of electricity in bulk from any company or persons authorised to give such a supply: see Electric Lighting Act, 1909, s. 20, *post*, p. 2119.

(*d*) See the Electric Lighting Act, 1888, s. 2, *ante*, p. 1807.

(*e*) The prohibition does not operate merely in connection with and relation to the particular area in question, but is of universal application, so that the undertakers may be restrained by injunction from carrying on business and supplying energy in any other place whatsoever, however far removed from the area of supply, and although such business is carried on and supply furnished quite independently of any of the special statutory powers of the undertakers (*Att.-Gen.* v. *Metropolitan Electric Supply Co.*, [1905] 1 Ch. 757; 69 J. P. 169).

Of late years it has become a common practice to include in special Acts of local authorities a section authorising them to supply electricity in bulk to adjoining districts. The Board of Trade in practice do not grant licences for the purpose referred to. As to connecting two areas of supply under the London Electric Supply Act, 1908, see *Battersea Borough Council* v. *County of London Electric Supply Co., Ltd.*, [1913] 2 Ch. 248; 77 J. P. 297, 325.

(*f*) Energy is supplied at the point where it is consumed. See *Gaslight and Coke Co.* v. *South Metropolitan Gas Co.*, *ante*, p. 363. And see note (*n*), *ante*, p. 1393.

(*g*) Clauses 5 and 6 relating to security for execution of works and to audit are expressly inapplicable where the undertakers are a local authority, because the Electric Lighting Act, 1882, s. 8, and the schedule to that Act, *ante*, pp. 1740, 1752, makes special provision for the like purposes.

received by them in respect of the undertaking, shall be applied by them as follows :—

(a) In payment of the working and establishment expenses and cost of maintenance of the undertaking, including all costs, expenses, penalties, and damages incurred or payable by the undertakers consequent upon any proceedings by or against the undertakers, their officers or servants, in relation to the undertaking ;

(b) In payment of the interest or dividend on any mortgages, stock, or other securities granted and issued by the undertakers in respect of money borrowed for electricity purposes ;

(c) In providing any instalments or sinking fund required to be provided in respect of moneys borrowed for electricity purposes ;

(d) In payment of all other their expenses of executing the special order not being expenses properly chargeable to capital ;

(e) In providing a reserve fund, if they think fit, by setting aside such money as they think reasonable, and investing the money and the resulting income thereof in Government securities, or in any other securities in which trustees are by law for the time being authorised to invest other than stock or securities of the undertakers, and accumulating it at compound interest until the fund so formed amounts to one-tenth of the aggregate capital expenditure on the undertaking.

The reserve fund shall be applicable to answer any deficiency at any time happening in the income of the undertakers from the undertaking, or to meet any extraordinary claim or demand at any time arising against the undertakers in respect of the undertaking, and so that if that fund is at any time reduced it may thereafter be again restored to the prescribed limit, and so on as often as the reduction happens.

The undertakers shall carry the net surplus remaining in any year and the annual proceeds of the reserve fund when amounting to the prescribed limit, to the credit of the local rate as defined by the principal Act or at their option shall apply that surplus, or any part thereof, to the improvement of the district for which they are the local authority, or in reduction of the capital moneys borrowed for electricity purposes.

Provided always that if the surplus in any year exceed five pounds per centum per annum upon the aggregate capital expenditure on the undertaking, the undertakers shall make such a rateable reduction in the charge for the supply of energy as in their judgment will reduce the surplus to that maximum rate of profit.

Any deficiency of income in any year when not answered out of the reserve fund shall be charged upon and payable out of the local rate.

(2) All moneys arising from the disposal of lands acquired by the undertakers for the purposes of the special order, and all other capital moneys received by them in respect of the undertaking, shall be applied by them as follows :—

(a) In the reduction of the capital moneys borrowed by them for electricity purposes ;

(b) In the reduction of the capital moneys borrowed by them for other than electricity purposes.

Purchase and use of lands by local authority.

8. Where a local authority are the undertakers the following provisions shall have effect :—

(1) Subject to the provisions of the special order and the principal Act the undertakers may acquire by purchase or on lease and use any lands for the purposes of the special order (*h*), and may also for those purposes use any other lands for the time being vested in or leased by them, but subject as to the last-mentioned lands to the approval of the Local Government Board, and may dispose of

(*h*) It is *ultra vires* for the local authority having acquired land for these purposes to use them for any other though within their statutory powers under other Acts, as, for instance, to use lands acquired for the purposes of the special order as a site for a refuse destructor although connected in such a way with the generating station that the refuse could be used as fuel for the purpose of generating electrical energy (*Att.-Gen.* v. *Pontypridd U. D. C.*, [1906] 2 Ch. 257 ; 70 J. P. 394). And see *Att.-Gen.* v. *Bradford Corporation* (1911), 75 J. P. 553 ; 55 Sol. J. 715.

any lands acquired by them under the provisions of this section which may not for the time being be required for the purposes of the special order: Provided that the amount of land so used by them shall not at any one time exceed in the whole five acres except with the consent of the Board of Trade.

(2) The undertakers shall not purchase or acquire for the purposes of the special order ten or more houses which on the fifteenth day of December last before the commencement of the special order, or in the case of the transfer of an undertaking to a local authority before the date of the transfer, were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers, or except with the consent of the Local Government Board, ten or more houses which were not so occupied on the said fifteenth day of December but have been or shall be subsequently so occupied.

(3) For the purposes of this section the expression "labouring class" means mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income does not exceed an average of thirty shillings a week, and the families of any of those persons who may be residing with them.

Incorporation of 38 & 39 Vict. c. 55, s. 265.

9. Where a local authority are the undertakers section two hundred and sixty-five of the Public Health Act, 1875 (*i*), shall be incorporated with the special order, and in the construction of that section "this Act" shall not mean the Public Health Act, 1875, but shall mean the principal Act and the special order, and the "local authority" shall mean the local authority as such undertakers.

Nature and Mode of Supply.

Systems and mode of supply.

10. Subject to the provisions of the special order and the principal Act, the undertakers may supply energy within the area of supply for all public and private purposes as defined by the said Act, provided as follows:—

(a) The energy shall be supplied only by means of some system approved in writing by the Board of Trade, and subject to the Board of Trade regulations; and

(b) The undertakers shall not, without the express consent of the Board of Trade, and, where the local authority are not themselves the undertakers of the local authority also (*k*), place any electric line above ground except within premises in the sole occupation or control of the undertakers, and except so much of any service line as is necessarily so placed for the purpose of supply; and

(c) The undertakers shall not permit any part of any circuit to be connected with earth except so far as may be necessary for carrying out the provisions of the Board of Trade regulations, unless the connection is for the time being approved by the Board of Trade, with the concurrence of the Postmaster-General, and is made in accordance with the conditions, if any, of that approval.

(*i*) *Ante*, p. 581. See also the Public Authorities Protection Act, 1893, *ante*, p. 963. As regards the county of London, the corresponding section is s. 121 of the P. H. (London) A., 1891.

(*k*) See the Electric Lighting Act, 1882, s. 14, *ante*, p. 1744. A derrick used in putting up a house in one of the streets of Montreal was brought into contact with the overhead wires of the respondent company, with the result that a current of electricity was diverted to the street and killed the appellant's husband. *Held*, that the respondents being authorised by the Quebec Act (1901), s. 10, in the alternative to place their wires either overhead or underground were not guilty of negligence in adopting one alternative rather than the other, or in neglecting to insulate or guard the wires in the absence of evidence that such precaution would have been effectual to avert the accident (*Dumphy* v. *Montreal Light, Heat, and Power Co.*, [1907] A. C. 454).

WORKS.

Additional provisions as to works.

11. The provisions of the special order as to works shall be in addition but subject to those of the principal Act, and in particular those of the Gasworks Clauses Act, 1847, with respect to breaking up streets, incorporated in the principal Act and set out in the Appendix to this Schedule (*l*).

Powers for execution of works.

12.—(1) Subject to the provisions of the principal Act and the special order, the undertakers may exercise all or any of the powers conferred on them by that Act and order, and may break up such streets not repairable by the local authority and such railways and tramways (if any) as they are specially authorised to break up by the special order, so far as those streets, railways, and tramways may for the time being be included in the area of supply, and be, or be upon, land dedicated to public use: Provided, however, as respects any such railway, that the powers hereby granted shall extend only to such parts thereof as pass across or along any highway on the level.

(2) Nothing in the special order shall authorise or empower the undertakers to break up or interfere with any street or part of a street not repairable by the local authority or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as they are specially authorised to break up by the special order, without the consent of the authority, company, or person, by whom that street, railway, or tramway is repairable, or of the Board of Trade under section thirteen of the Electric Lighting Act, 1882 (*m*), and where the Board of Trade give that consent, the provisions of the special order shall apply to the street, railway, or tramway to which the consent relates as if the undertakers had been specially authorised to break it up by that order (*n*).

Street boxes.

13.—(1) Subject to the provisions of the principal Act, and the special order, and the Board of Trade regulations, the undertakers may construct in any street such boxes (*o*) as may be necessary for purposes in connection with the

(*l*) See 45 & 46 Vict. c. 56, s. 12; 10 & 11 Vict. c. 15, ss. 6—12, 18—20; 34 & 35 Vict. c. 41, ss. 38—42, 45, and 46. To save space these enactments, having been already fully set out once in this Work, are not repeated here.

By agreement the telegraphs of the Postmaster-General or his licensee may be placed in the trenches, tubes, pipes, or apparatus of an electric company or "person." (See s. 6 of the Telegraph Act, 1892.) In that section the word "person" includes any body of persons corporate or unincorporate (Interpretation Act, 1889, s. 19).

(*m*) *Ante*, p. 1744. And see as to the Board of Trade, clause 21 (3), *post*.

(*n*) A company to which the London Electric Supply Act, 1908, applied, had one area of supply north of and one south of the Thames, and wished to connect them by mains running through streets outside either area, which included a bridge belonging to the corporation as trustees of the Bridge House estates, and repairable by them as trustees and not by any local authority. It was held that s. 4 (3) (B) of the Act of 1908 gave power to the company to break up the intervening streets and bridge for the purpose of laying therein the connecting mains, subject to the consent either of the corporation or of the Board of Trade under s. 13 of the Electric Lighting Act, 1882, and this sub-section (*London Corporation* v. *County of London Electric Supply Co.*, [1910] 2 Ch. 208; 74 J. P. 268).

Under ss. 6 and 7 of the Gasworks Clauses Act, 1847, as adapted to electric light undertakings by the Electric Lighting Act, 1882, the undertakers are empowered to break up streets subject to certain restrictions. By s. 13 of the Act of 1882 (which is substantially repeated in this sub-section) nothing in that Act or in any Act incorporated therewith shall authorise the undertakers to break up any street which is not repairable by the local authority without the consent of the person by whom such street is repairable or the written consent of the Board of Trade. It was held by the Court of Appeal (KENNEDY, L.J., *dissentiente*) that where there was no person by whom the street was repairable, the section operated as an absolute prohibition against the breaking up of the street by the undertakers, and that therefore where a strip of land adjoining a street repairable by the local authority had been dedicated to the public by the owner and had become part of the street but was not repairable either by the local authority or anyone else, the local authority as undertakers had no power to break up that portion of the street (*Andrews* v. *Abertillery U. D. C.*, [1911] 2 Ch. 398; 75 J. P. 449).

(*o*) Such boxes are "buildings, structures, or works" within s. 145 of the London Building Act, 1894, and notice under that section must be served on the district surveyor before they are commenced (*Whitechapel Board of Works* v. *Crow* (1901), 65 J. P. 549;

supply of energy, including apparatus for the proper ventilation of the boxes: Provided that, where the local authority are not themselves the undertakers, no such box or apparatus shall be placed above ground, except with the consent of the authority, body, or person, by whom the street is repairable.

(2) Every such box shall be for the exclusive use of the undertakers and under their sole control, except so far as the Board of Trade otherwise order, and shall be used by the undertakers only for the purpose of leading off service lines and other distributing conductors, or for examining, testing, regulating, measuring, directing, or controlling, the supply of energy, or for examining or testing the condition of the mains or other portions of the works, or for other like purposes connected with the undertaking, and the undertakers may place therein meters, switches, and any other suitable and proper apparatus, for any of the above purposes.

(3) Every such box, including the upper surface or covering thereof, shall be constructed of such materials, and shall be constructed and maintained by the undertakers in such manner, as not to be a source of danger, whether by reason of inequality of surface or otherwise.

(4) Where the local authority are not themselves the undertakers, they may, with the approval of the Board of Trade, prescribe the hours during which the undertakers are to have access to the boxes, and if the undertakers during any hours not so prescribed remove or displace or keep removed or displaced the upper surface or covering of any box without the consent of the local authority, they shall be liable for each offence to a penalty not exceeding five pounds, and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

Notice of works, with plan, to be served on Postmaster-General and local authority.

14.—(1) Where the exercise of any of the powers of the undertakers in relation to the execution of any works (including the construction of boxes) will involve the placing of any works in, under, along or across any street or public bridge, the following provisions shall have effect:—

(a) One month before commencing the execution of the works (not being repairs, renewals, or amendments of existing works of which the character and position are not altered), the undertakers shall serve a notice upon the Postmaster-General and the local authority describing the proposed works, together with a plan (*p*) of the works showing the mode and position in which the works are intended to be executed, and the manner in which it is intended that the street or bridge, or any sewer, drain, or tunnel, therein or thereunder, is to be interfered with, and shall, upon being required to do so by the Postmaster-General or the local authority, give him or them any such further information in relation thereto as he or they desire.

No part of the month of August shall be included in calculating the above-mentioned period of one month.

(b) The Postmaster-General or the local authority may, in his or their discretion, approve any such works or plan, subject to such amendments or conditions as may seem fit, or may disapprove them, and may give notice of that approval or disapproval to the undertakers.

(c) Where the Postmaster-General or the local authority approve any such

84 L. T. 595). The circumstance that the undertakers are required by their Provisional Order to give notice of the construction of such boxes to the local authority and to the Postmaster-General, and to construct boxes in accordance with plans approved by those authorities, does not relieve the undertakers from the obligation of giving notice to the district surveyor under s. 145 of the Act of 1894 (*Charing Cross and Strand Electric Supply Corporation* v. *Woodthorpe* (1903), 67 J. P. 286; 88 L. T. 772). These cases were followed again in *County of London Electric Supply Co., Ltd.* v. *Perkins* (1908), 72 J. P. 133; 6 L. G. R. 344.

As to construction of street boxes see Regulation 34 of the Board of Trade Regulations, 1895, and 37 of the Board of Trade Regulations, 1897, and as to transforming stations Regulation 35 of the Board of Trade Regulations, 1895.

(*p*) See definition, clause 1, *ante*, p. 1918. See also *Edgware Highway Board* v. *Colne Valley Water Co.*, and *East Molesey L. B.* v. *Lambeth Waterworks Co.*, *ante*, p. 1413.

works or plan, subject to any amendments or conditions with which the undertakers are dissatisfied, or disapprove any such works or plan, the undertakers may appeal to the Board of Trade, and the Board of Trade may inquire into the matter, and allow or disallow the appeal, and may approve any such works or plan, subject to such amendments or conditions as seem fit, or may disapprove them.

(d) If the Postmaster-General or the local authority fail to give any such notice of approval or disapproval to the undertakers within one month after the service of the notice upon them, he or they shall be deemed to have approved the works and plan.

(e) Notwithstanding anything in the special order or the principal Act, the undertakers shall not be entitled to execute any such works as above specified, except so far as they may be of a description and in accordance with a plan which has been approved, or is to be deemed to have been approved, by the Postmaster-General and the local authority, or by the Board of Trade, as above mentioned; but where any such works, description, and plan are so approved, or to be deemed to be approved, the undertakers may cause those works to be executed in accordance with the description and plan, subject in all respects to the provisions of the special order and the principal Act.

(f) If the undertakers make default in complying with any of the requirements or restrictions of this section, they shall (in addition to any other compensation which they may be liable to make under the provisions of the special order or the principal Act) make full compensation to the Postmaster-General and the local authority for any loss or damage which he or they may incur by reason thereof, and in addition thereto, they shall be liable for each default to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

(2) In the application of this section to a street or public bridge (not within a county borough) which is repairable by the county council, a reference to the county council shall be substituted for a reference to the local authority.

(3) In the application of this section within any area where the undertakers are the local authority, the reference to the local authority and to sewers, drains, or tunnels in or under streets or bridges shall not apply, except so far as a reference to the county council is substituted for a reference to the local authority.

(4) Nothing in this section shall exempt the undertakers from any penalty or obligation to which they may be liable under the special order or otherwise by law in the event of any telegraphic line of the Postmaster-General being at any time injuriously affected by the undertakers' works or their supply of energy.

As to streets not repairable by local authority, railways, tramways, and canals.

15. Where the exercise of the powers of the undertakers in relation to the execution of any works will involve the placing of any works in, under, along, or across any street or part of a street not repairable by the local authority, including, where the area of supply is not wholly in a county borough, the county council, or over or under any railway, tramway or canal, the following provisions shall have effect (*q*) unless otherwise agreed between the parties interested:—

(a) One month before commencing the execution of the works (not being repairs, renewals, or amendments of existing works of which the character and position are not altered) the undertakers shall, in addition to any other notices which they may be required to give under the special order, or the principal Act, serve a notice upon the body or person liable to repair the street or part of a street, or the body or person for the time being entitled to work the railway or tramway, or the owners of the canal (as the case may be), in this section referred to as the "owners," describing the proposed works, together with a plan of the works showing the mode and position in

(*q*) See also Rules xi. and xiii. of the Board of Trade Rules, *ante*, pp. 1757, 1759.

which the works are intended to be executed and placed, and shall, upon being required to do so by any such owners, give them any such further information in relation thereto as they desire.

(b) Every such notice shall contain a reference to this section, and direct the attention of the owners to whom it is given to the provisions thereof.

(c) Within three weeks after the service of any such notice and plan upon any owners, those owners may, if they think fit, serve a requisition upon the undertakers requiring that any question in relation to the works, or to compensation in respect thereof, and any other question arising upon the notice or plan, shall be settled by arbitration; and thereupon that question, unless settled by agreement, shall be determined by arbitration accordingly.

(d) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of the street, railway, tramway, or canal, and may, if he thinks fit, require the undertakers to execute any temporary or other works so as to avoid any interference with any traffic so far as may be possible.

(e) Where no such requisition as in this section mentioned is served upon the undertakers, or where after any such requisition has been served upon them any question required to be settled by arbitration has been so settled, the undertakers may, upon paying or securing any compensation which they may be required to pay or secure, cause to be executed the works specified in such notice and plan as aforesaid, and may repair, renew, and amend them (provided that their character and position are not altered), but subject in all respects to the provisions of the special order and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been determined by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.

(f) All works to be executed by the undertakers under this section shall be carried out to the reasonable satisfaction of the owners, and those owners shall have the right to be present during the execution of the works.

(g) Where the repair, renewal, or amendment of any existing works, of which the character or position is not altered, will involve any interference with any railway or with any tramway over or under which those works have been placed, the undertakers shall, unless it is otherwise agreed between the parties, or in cases of emergency, give to the owners not less than twenty-four hours' notice before commencing to effect the repair, renewal, or amendment, and the owners shall be entitled by their officer to superintend the works, and the undertakers shall conform to such reasonable requirements as may be made by the owners or that officer. The notice shall be in addition to any other notices which the undertakers may be required to give under the special order or the principal Act.

(h) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of the special order or the principal Act) make full compensation to the owners affected thereby for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable for each default to a penalty not exceeding ten pounds and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

Street authority, etc., may give notice of desire to break up streets, etc., on behalf of undertakers.

16. Any body or person for the time being liable to repair any street or part of a street, or entitled to work any railway or tramway which the undertakers are empowered to break up for the purposes of the special order, may, if they think fit, serve a notice upon the undertakers stating that they desire to exercise or discharge all or any part of any of the powers or duties of the undertakers as therein specified in relation to the breaking up, filling in, reinstating,

or making good any streets, bridges, sewers, drains, tunnels, or other works vested in or under the control or management of that body or person, and may amend or revoke any such notice by another notice similarly served.

Where any such body or person (in this section referred to as the "givers of the notice") have given notice that they desire to exercise or discharge any such specified powers and duties of the undertakers, then so long as that notice remains in force the following provisions shall have effect, unless it is otherwise agreed between the parties interested :—

(a) The undertakers shall not be entitled to proceed themselves to exercise or discharge any such specified powers or duties as aforesaid, except where they have required the givers of the notice to exercise or discharge those powers or duties, and the givers of the notice have refused or neglected to comply with that requisition, as hereinafter provided, or in cases of emergency.

(b) In addition to any other notices which they are required to give under the provisions of the special order or the principal Act, the undertakers shall, not more than four days and not less than two days before the exercise or discharge of any such powers or duties so specified as aforesaid is required to be commenced, serve a requisition upon the givers of the notice stating the time when that exercise or discharge is required to be commenced, and the manner in which any such powers or duties are required to be exercised or discharged.

(c) Upon receipt of any such requisition as last aforesaid, the givers of the notice may proceed to exercise or discharge any such powers or duties as required by the undertakers, subject to the like restrictions and conditions, so far as they are applicable, as the undertakers would themselves be subject to in that exercise or discharge.

(d) If the givers of the notice decline or, for twenty-four hours after the time when any such exercise or discharge of any powers or duties is by any requisition required to be commenced, neglect to comply with the requisition, the undertakers may themselves proceed to exercise or discharge the powers or duties therein specified in like manner as they might have done if such notice as aforesaid had not been given to them by the givers of the notice.

(e) In any case of emergency the undertakers may themselves proceed at once to exercise or discharge so much of any such specified powers or duties as aforesaid as may be necessary for the actual remedying of any defect from which the emergency arises without serving any requisition on the givers of the notice ; but in that case the undertakers shall, within twelve hours after they begin to exercise or discharge such powers or duties as aforesaid, give information thereof in writing to the givers of the notice.

(f) If the undertakers exercise or discharge any such specified powers or duties as aforesaid otherwise than in accordance with the provisions of this section, they shall be liable for each offence to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

(g) All expenses properly incurred by the givers of the notice in complying with any requisition of the undertakers under this section shall be repaid to them by the undertakers, and may be recovered summarily.

(h) The givers of the notice may, if they think fit, require the undertakers where the local authority are not themselves the undertakers, to give them such security for the repayment to them of any expenses incurred or to be incurred by them under this section as may be determined in manner provided by this Schedule. If the undertakers fail to give any such security within seven days after being required to do so, or in case of difference after the difference has been determined by a court of summary jurisdiction, they shall not be entitled to serve any further requisition upon the givers of the notice requiring them to exercise or discharge any powers or duties under this section until the security has been duly given.

Provided that nothing in this section shall in any way affect the rights of the undertakers to exercise or discharge any powers or duties conferred or imposed upon them by the special order or the principal Act in relation to the execution of any works beyond the actual breaking up, filling in, reinstating or making good any such street or part of a street, or any such bridges, sewers, drains, tunnels, or other works, or railway or tramway as in this section mentioned.

As to alteration of pipes, wires, etc., under streets.

17. The undertakers may alter the position (*r*) of any pipes (except, in a case where the local authority are not themselves the undertakers, any pipe forming part of any sewer of the local authority), or any wires being under any street or place authorised to be broken up by them, which may interfere with the exercise of their powers under the principal Act or the special order ; and any body or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in that body or person in relation to that street or place (*s*), subject to the following provisions, unless it is otherwise agreed between the parties interested :

(a) One month before commencing any such alterations the undertakers, or the body or person (as the case may be,) in this section referred to as the "operators," shall serve a notice upon the body or person for the time being entitled to the pipes, wires, electric lines, or works (as the case may be), in this section referred to as the "owners," describing the proposed alterations, together with a plan showing the manner in which it is intended that the alterations shall be made, and shall, upon being required to do so by any such owners, give them any such further information in relation thereto as they may desire.

(b) Within three weeks after the service of any such notice and plan upon any owners those owners may, if they think fit, serve a requisition upon the operators requiring that any question in relation to the works or to compensation in respect thereof or any other question arising upon such notice or plan as aforesaid shall be settled by arbitration ; and thereupon that question, unless settled by agreement, shall be determined by arbitration accordingly.

(c) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of the pipes, wires, electric lines, or works, and may, if he thinks fit, require the operators to execute any temporary or other works, so as to avoid interference with any purpose for which the pipes, wires, electric lines, or works are used so far as possible.

(d) Where no such requisition as in this section mentioned is served upon the operators, the owners shall be held to have agreed to the notice or plan served on them as aforesaid, and in that case, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the operators, upon paying or securing any compensation which they may be required to pay or secure, may cause the alterations specified in such notice and plan as aforesaid to be made, but subject in all respects to the provisions of the principal Act and the special order, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been determined by arbitration as hereinbefore mentioned or as may be agreed upon between the parties.

(e) At any time before any operators are entitled to commence any such alterations as aforesaid, the owners may serve a statement upon the operators stating that they desire to execute the alterations themselves, and where any such statement has been served upon the operators, they shall not be entitled to proceed themselves to execute the alterations, except where they have notified to the owners that they require them to execute the alterations, and the owners have refused or neglected to comply with the notification as hereinafter provided.

(*r*) See the Electric Lighting Act, 1882, s. 15, *ante*, p. 1744.

(*s*) See s. 149 of the P. H. A., 1875, *ante*, p. 269, and *Southwark and Vauxhall Water Co.* v. *Wandsworth District Board of Works*, *ante*, p. 277.

(f) Where any such statement as last aforesaid has been served upon the operators, they shall, not more than forty-eight hours and not less than twenty-four hours before the execution of the alterations is required to be commenced, serve a notification upon the owners stating the time when the alterations are required to be commenced, and the manner in which the alterations are required to be made.

(g) Upon receipt of any such notification as last aforesaid, the owners may proceed to execute the alterations as required by the operators, subject to the like restrictions and conditions, so far as they are applicable, as the operators would themselves be subject to in executing the alterations.

(h) If the owners decline or, for twenty-four hours after the time when any such alterations are required to be commenced, neglect to comply with the notification, the operators may themselves proceed to execute the alterations in like manner as they might have done if no such statement as aforesaid had been served upon them.

(i) All expenses properly incurred by any owners in complying with any notification of any operators under this section shall be repaid to them by the operators, and may be recovered summarily.

(j) Any owners may, if they think fit, by any statement served by them under this section upon any operators, not being a local authority, require the operators to give them such security for the repayment to them of any expenses to be incurred by them in executing any alterations as above mentioned as may be determined in manner provided by the special order, and where any operators have been so required to give security, they shall not be entitled to serve a notification upon the owners requiring them to execute the alterations until the security has been duly given.

(k) If the operators make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of the special order or the principal Act) make full compensation to the owners affected thereby for any loss, damage, or penalty which they may incur by reason thereof, and in addition thereto they shall be liable for each default to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds: Provided that the operators shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency, and that the operators complied with the requirements of this section so far as was reasonable under the circumstances.

Laying of electric lines, etc., near sewers, etc., or gas or water pipes, or other electric lines.

18.—(1) Where the undertakers require to dig or sink any trench for laying down or constructing any new electric lines (other than service lines) or other works near to which any sewer, drain, watercourse, defence, or work under the jurisdiction or control of the local authority, or any main, pipe, syphon, electric line, or other work belonging to any gas, electric supply, or water company has been lawfully placed, or where any gas or water company require to dig or sink any trench for laying down or constructing any new mains or pipes (other than service pipes) or other works near to which any lines or works of the undertakers have been lawfully placed, the undertakers or the gas or water company (as the case may be), in this section referred to as the "operators," shall, unless it is otherwise agreed between the parties interested, or in case of a sudden emergency, give to the local authority or to the gas, electric supply, or water company, or to the undertakers (as the case may be), in this section referred to as the "owners," not less than three days' notice before commencing to dig or sink such trench as aforesaid, and those owners shall be entitled by their officer to superintend the work, and the operators shall conform with such reasonable requirements as may be made by the owners or the officer for protecting from injury every such sewer, drain, watercourse, defence, main, pipe, syphon, electric line, or work, and for securing access thereto, and they shall also, if required by the owners thereof, repair any damage that may be done thereto.

(2) Where the operators find it necessary to undermine but not alter the position of any pipe, electric line, or work, they shall temporarily support

it in position during the execution of their works, and before completion provide a suitable and proper foundation for it where so undermined.

(3) Where the operators (being the undertakers) lay any electric line, crossing or liable to touch any mains, pipes, lines, or services belonging to any gas, electric supply, or water company, the conducting portion of the electric line shall be effectively insulated in a manner approved by the Board of Trade; and the undertakers shall not, except with the consent of the gas, electric supply, or water company, as the case may be, and of the Board of Trade, lay their electric lines so to come into contact with any such mains, pipes, lines, or services, or, except with the like consent, employ any such mains, pipes, lines, or services as conductors for the purposes of their supply of energy (*t*).

(4) Any question or difference which may arise under this section shall be determined by arbitration (*u*).

(5) If the operators make default in complying with any of the requirements of this section they shall make full compensation to all owners affected thereby for any loss, damage, penalty, or costs which they may incur by reason thereof; and in addition thereto they shall be liable for each default to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds (*x*): Provided that the operators shall not be subject to any such penalty if the court are of opinion that the case was one of emergency, and that the operators complied with the requirements of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the operators were ignorant of the position of the sewer, drain, watercourse, defence, main, pipe, syphon, electric line, or work affected thereby, and that that ignorance was not owing to any negligence on the part of the operators.

(6) For the purposes of this section the expression "gas company" shall mean any body or person lawfully supplying gas; the expression "water company" shall mean any body or person lawfully supplying water or water power; and the expression "electric supply company" shall mean any body or person supplying energy in pursuance of the principal Act but not in pursuance of the special order.

(7) Where the local authority are themselves the undertakers, the references in this section to the local authority, and to sewers, drains, watercourses, defences, or works under the jurisdiction or control of that local authority, shall not apply.

For protection of railway and canal companies.

19. In the exercise of any of the powers of the special order relating to the execution of works, the undertakers shall not in any way injure the railways, tunnels, arches, works, or conveniences belonging to any railway or canal (*y*) company, nor obstruct or interfere with the working of the traffic passing along any railway or canal.

For protection of telegraphic and telephonic wires.

20.—(1) The undertakers shall take all reasonable precautions in constructing, laying down, and placing their electric lines and other works of all descriptions, and in working their undertaking so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic, or electric signalling communication, or the currents in that wire or line, whether that wire or line be or be not in existence at the time of the laying down or placing of the electric lines or other works.

If any question arises between the undertakers and the owner of any such wire or line as to whether the undertakers have constructed, laid down, or placed their electric lines or other works or worked their undertaking in contravention of this sub-section, and as to whether the working of that wire or line or the current therein is or is not injuriously affected thereby,

(*t*) See Regulation A 28 of the Board of Trade Regulations of 1895.

(*u*) As to appointment of arbitrator, see s. 28 of Electric Lighting Act, 1882, *ante*, p. 1749.

(*x*) As to recovery of penalties, see s. 76, *post*, p. 1946. The offence of non-compliance with the requirements of the section is a continuing offence, and therefore s. 11 of the S. J. A., 1848, does not apply. The right to recover penalties is not barred by the reference to arbitration and the award (*Chepstow Electric Light and Power Co.* v. *Chepstow Gas and Coke Consumers Co.*, [1905] 1 K. B. 198; 69 J. P. 72).

(*y*) As to canals, see also the Electric Lighting Act, 1882, s. 16, *ante*, p. 1745.

that question shall be determined by arbitration; and the arbitrator (unless he is of opinion that the wire or line, not having been so in existence at such time as aforesaid, has been placed in unreasonable proximity to the electric lines or works of the undertakers) may direct the undertakers to make any alterations in, or additions to, their system, so as to comply with the provisions of this section, and the undertakers shall make those alterations or additions accordingly.

(2) Seven days before commencing to lay down or place any electric line, or to use any electric line in any manner whereby the work of telegraphic or telephonic or electric signalling communication through any wire or line lawfully laid down or placed in any position may be injuriously affected, the undertakers shall, unless otherwise agreed between the parties interested, give to the owner of the wire or line notice in writing specifying the course, nature, and gauge of the electric line, and the manner in which the electric line is intended to be used, and the amount and nature of the currents intended to be transmitted thereby, and the extent to and manner in which (if at all) earth returns are proposed to be used; and any owner entitled to receive that notice may serve a requisition on the undertakers, requiring them to adopt such precautions as may be therein specified in regard to the laying, placing, or user of the electric line for the purpose of preventing the injurious affection; and the undertakers shall conform with such reasonable requirements as may be made by the owner for the purpose of preventing the communication through the wire or line from being injuriously affected as aforesaid.

If any difference arises between any such owner and the undertakers with respect to the reasonableness of any requirements so made, that difference shall be determined by arbitration.

Provided that nothing in this sub-section shall apply to repairs or renewals of any electric line so long as the course, nature, and gauge of the electric line, and the amount and nature of the current transmitted thereby, are not altered.

(3) If in any case the undertakers make default in complying with the requirements of this section, they shall make full compensation to every such owner as aforesaid for any loss or damage which he may incur by reason thereof, and in addition thereto they shall be liable for each default to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings: Provided that the undertakers shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances, or that the default was due to the fact that the undertakers were ignorant of the position of the wire or line affected thereby, and that that ignorance was not owing to any negligence on the part of the undertakers.

(4) Nothing in this section contained shall be held to deprive any owner of any existing rights to proceed against the undertakers by indictment, action, or otherwise, in relation to any of the matters aforesaid.

COMPULSORY WORKS.

Mains, etc., to be laid down in streets specified in special order and in remainder of area of supply.

21.—(1) The undertakers shall, within a period of two years after the commencement of the special order, lay down suitable and sufficient distributing mains for the purposes of general supply throughout every street or part of a street specified in that behalf in the special order, and shall thereafter maintain those mains.

(2) In addition to the mains hereinbefore specified the undertakers shall, at any time after the expiration of eighteen months after the commencement of the special order, lay down suitable and sufficient distributing mains for the purposes of general supply throughout every other street or part of a street within the area of supply, upon being required to do so in manner provided by the special order.

All such mains as last above mentioned (unless already laid down) shall be laid down by the undertakers within six months after any requisition in that behalf served upon them in accordance with the provisions of the

special order has become binding upon them, or within such further time as may in any case be approved by the Board of Trade.

(3) When any such requisition is made in respect of any street not repairable by the local authority, which the undertakers are not specially authorised to break up by the special order, the undertakers shall (unless the authority, or person by whom that street is repairable, consent to the breaking up thereof) forthwith apply to the Board of Trade under section thirteen of the Electric Lighting Act, 1882 (z) for the written consent of the Board authorising and empowering the undertakers to break up that street, and the requisition shall not be binding upon them if the Board of Trade refuse their consent in that behalf.

As to laying of electric line under special agreement.

22. Where the local authority are not themselves the undertakers, the undertakers shall, twenty-eight days at least before commencing to lay in any street any electric line which is intended for supplying energy to any particular consumer, and not for the purposes of general supply, serve upon the local authority, and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the electric line so to be laid, a notice stating that the undertakers intend to lay the electric line, and setting forth the effect of this section, and if within that period any two or more of those owners or occupiers require in accordance with the provisions of the special order that a supply shall be given to their premises, the necessary distributing main shall be laid by the undertakers at the same time as the electric line intended for the particular consumer.

If undertakers fail to lay down mains, etc., order may be revoked.

23.—(1) If the undertakers, not being a local authority, make default in laying down any distributing mains in accordance with the provisions of the special order within the periods prescribed in that behalf respectively, they shall be liable for each default to a penalty not exceeding five pounds for each day during which the default continues, and if the Board of Trade are of opinion in any case that the default is wilful and unreasonably prolonged they may, after considering any representations of the local authority, deal with the special order in manner provided by this section.

(2) If the local authority are themselves the undertakers, and make default in laying down any distributing main in accordance with the provisions of the special order, within the periods prescribed in that behalf respectively, the Board of Trade may deal with the special order in manner provided by this section.

(3) Where the Board of Trade are authorised under this section to deal with a special order, they may either revoke the order as to the whole or any part of the area of supply, or, if the undertakers so desire, suffer it to remain in force as to that area or part thereof, subject to such conditions as they think fit to impose, and any conditions so imposed shall be binding on and observed by the undertakers, and shall be of the like force and effect in every respect as though they were contained in the special order: Provided that the Board of Trade shall not revoke the special order as to part only of the area of supply where the undertakers make a representation that they desire to be relieved of their liabilities as respects the rest of the area of supply, and in that case the Board of Trade shall not under this section revoke the special order otherwise than as to the whole of the area of supply.

Manner in which requisition is to be made.

24.—(1) Any requisition requiring the undertakers to lay down distributing mains for the purposes of general supply throughout any street or part of a street may be made by six or more owners or occupiers of premises along that street or part of a street, or, where the local authority are not themselves the undertakers and have the control and management of the public lamps in that street or part of a street, by the local authority.

(2) Every such requisition shall be signed by the persons making it, or by the local authority (as the case may be), and shall be served upon the undertakers.

(3) Forms of requisition shall be kept by the undertakers at their office,

(z) *Ante*, p. 1744.

and a copy shall, on application, be supplied free of charge to any owner or occupier of premises within the area of supply and, where necessary, to the local authority, and any requisition so supplied shall be deemed valid in point of form.

Provisions on requisition by owners or occupiers

25.—(1) Where any such requisition is made by any such owners or occupiers as aforesaid, the undertakers (if they think fit) may, within fourteen days after the service of the requisition upon them, serve a notice on all the persons by whom the requisition is signed, stating that they decline to be bound by the requisition unless those persons or some of them will bind themselves to take, or will guarantee that there shall be taken, a supply of energy for a period of three years at least, of such amount in the aggregate (to be specified by the undertakers in the notice) as will, at the rates of charge for the time being charged by the undertakers for a supply of energy from distributing mains to the ordinary consumers within the area of supply, produce annually such reasonable sum as is specified by the undertakers in the notice: Provided that in the notice the undertakers shall not, without the authority of the Board of Trade, specify any sum exceeding twenty per centum upon the expense of providing and laying down the required distributing mains and any other mains or additions to existing mains which may be necessary for the purpose of connecting those distributing mains with the nearest available source of supply.

(2) Where such a notice is served the requisition shall not be binding on the undertakers unless, within fourteen days after the service of the notice on all the persons signing the requisition has been effected, or in case of difference within fourteen days after the delivery of the arbitrator's award, there be tendered to the undertakers an agreement severally executed by those persons or some of them, binding them to take or guaranteeing that there shall be taken a supply of energy for a period of three years at the least of such amount as will in the aggregate at the rates of charge above specified produce an annual sum amounting to the sum specified in the notice or determined by arbitration under this section, nor unless sufficient security for the payment to the undertakers of all moneys which may become due to them from those persons under the agreement is offered to the undertakers (if required by them by such notice as aforesaid) within the period limited for the tender of the agreement as aforesaid.

(3) If the undertakers consider that the requisition is unreasonable, or that, under the circumstances of the case, the provisions of this section ought to be varied, they may, within fourteen days after the service of the requisition upon them, appeal to the Board of Trade, and that Board after such inquiry (if any) as they think fit, may, by order, either determine that the requisition is unreasonable, and shall not be binding upon the undertakers, or may authorise the undertakers by their notice to require a supply of energy to be taken for such longer period than three years, and to specify such sum or percentage, whether calculated as hereinbefore provided or otherwise, as is fixed or directed by the order, and the terms of the above-mentioned agreement shall be varied accordingly.

(4) In case of any appeal to the Board of Trade under this section, any notice by the undertakers under this section may be served by .hem within fourteen days after the decision of the Board of Trade.

(5) If any difference arises between the undertakers and any persons signing any such requisition as to any such notice or agreement, that difference shall, subject to the provisions of this section and to the decision of the Board of Trade upon any such appeal as aforesaid, be determined by arbitration.

Provisions on requisition by local authority.

26. Where any such requisition is made by the local authority it shall not be binding on the undertakers, unless at the time when the service is effected, or within fourteen days thereafter, there be tendered to the undertakers (if required by them) an agreement executed by the local authority, and binding them to take for a period of three years at the least a supply of energy for lighting such public lamps in the street or part of a street in respect of which the requisition is made as may be under their management or control.

SUPPLY (*a*).

Undertakers to furnish sufficient supply of energy to owners and occupiers within the area of supply.

27.—(1) The undertakers shall, upon being required to do so by the owner or occupier of any premises situate within fifty yards from any distributing main of the undertakers in which they are, for the time being, required to maintain or are maintaining a supply of energy for the purposes of general supply to private consumers under the special order or the Board of Trade regulations, give and continue to give a supply of energy for those premises in accordance with the provisions of the special order and of the said regulations, and they shall furnish and lay any electric lines (*b*) that may be necessary for the purpose of supplying the maximum power with which any such owner or occupier is entitled to be supplied under the special order subject to the conditions following; (that is to say,)—

The cost of so much of any electric line for the supply of energy to any owner or occupier as may be laid upon the property of that owner or in the possession of that occupier, and of so much of any such electric lines as it may be necessary to lay for a greater distance than sixty feet from any distributing main of the undertakers, although not on that property, shall, if the undertakers so require, be defrayed by that owner or occupier.

(2) Every owner or occupier of premises requiring a supply of energy shall—

(a) Serve a notice upon the undertakers specifying the premises in respect of which the supply is required and the maximum power required to be supplied, and the day (not being an earlier day than a reasonable time after the date of the service of the notice) upon which the supply is required to commence; and

(b) If required by the undertakers, enter into a written contract with them to continue to receive and pay for a supply of energy for a period of at least two years of such an amount that the payment to be made for the supply, at the rate of charge for the time being charged by the undertakers for a supply of energy to ordinary consumers within the area of supply, shall not be less than twenty per centum per annum on the outlay incurred by the undertakers in providing any electric lines required under this section to be provided by them for the purpose of the supply, and if required by the undertakers give to them security for the payment to them of all moneys which may become due to them by the owner or occupier in respect of any electric lines to be furnished by the undertakers, and in respect of energy to be supplied by them.

(3) Provided always, that the undertakers may, after they have given a supply of energy in respect of any premises, by notice in writing, require the owner or occupier of those premises, within seven days after the date of the service of the notice, to give to them security for the payment of all moneys which may become due to them in respect of the supply, in case the owner or occupier has not already given that security, or in case any security given

(*a*) Undertakers were under a contract to supply light to the inhabitants of a district and to the streets, public places and private property therein, and in order to carry out the undertaking to do certain specified things and to provide everything which might be necessary whether specified or not for the purpose of supplying electric light to the street lamps. In consideration of these requirements the appellants who were consumers were bound to pay "at such rates as will yield to the contractors a return equal to 10 per cent. over the actual cost of generating the light." It was held that the words "generating the light" covered the whole series of operations leading up to the production of light in the lamps and the "actual cost" included depreciation of plant, rent, rates, taxes and insurance (*Bulawayo Municipality* v. *Bulawayo Waterworks Co., Ltd.*, [1908] A. C. 241).

(*b*) As to payment of the cost of an electric installation for a country mansion as between tenant for life and remainderman, see *Re Freake's Settlement, Lord Kinnaird* v. *Freake*, [1902] 1 Ch. 97; but in a later case it was held that an electric installation is not an "addition" to a building within the meaning of s. 13 of the Settled Land Act, 1890 (*Re Clarke's Settlement*, [1902] 2 Ch. 327); see also *Re Blagrave's Settled Estates* (1902), 87 L. T. 62. For a case in which undertakers were held liable for injury resulting to a workman owing to a live wire being left upon premises when they had previously disconnected the installation, see *Wheeler* v. *Marylebone Corporation* (1910) 32 M. C. C. 223.

has become invalid or is insufficient; and in case any such owner or occupier fail to comply with the terms of the notice, the undertakers may, if they think fit, discontinue to supply energy for the premises so long as the failure continues.

(4) Provided also, that if the owner or occupier of any such premises as aforesaid uses any form of lamp or burner, or uses the energy supplied to him by the undertakers for any purposes, or deals with it in any manner so as to interfere unduly or improperly with the efficient supply of energy to any other body or person by the undertakers, the undertakers may, if they think fit, discontinue to supply energy to those premises so long as the lamp or burner is so used, or the energy is so used or dealt with.

(5) Provided also, that the undertakers shall not be compelled to give a supply of energy to any premises unless they are reasonably satisfied that the electric lines, fittings, and apparatus therein are in good order and condition, and not calculated to affect injuriously the use of energy by the undertakers or by other persons.

(6) If any difference arises under this section as to any improper use of energy or as to any alleged defect in any electric lines, fittings, or apparatus, that difference shall be determined by arbitration.

Maximum power.

28.—(1) The maximum power with which any consumer shall be entitled to be supplied shall be of such amount as he may require to be supplied with, not exceeding what may be reasonably anticipated as the maximum consumption on his premises: Provided that where any consumer has required the undertakers to supply him with a maximum power of any specified amount he shall not be entitled to alter that maximum except upon one month's notice to the undertakers, and any expenses reasonably incurred by the undertakers in respect of the service lines by which energy is supplied to the premises of that consumer, or any fittings or apparatus of the undertakers upon those premises, consequent upon the alteration, shall be paid by him to the undertakers, and may be recovered summarily as a civil debt.

(2) If any difference arises between any such owner or occupier and the undertakers as to what may be reasonably anticipated as the consumption on his premises or as to the reasonableness of any expenses under this section, that difference shall be determined by arbitration.

Supply of energy to public lamps.

29. Where the local authority are not themselves the undertakers, the undertakers shall, upon receiving reasonable notice from the local authority requiring them to supply energy to any public lamps within the distance of seventy-five yards from any distributing main of the undertakers in which they are for the time being required to maintain a current of energy for the purposes of general supply under the special order, or the Board of Trade regulations, give and continue to give a supply of energy to those lamps in such quantities as the local authority may require to be supplied.

Penalty for failure to supply (c).

30.—(1) Whenever the undertakers make default in supplying energy to any owner or occupier of premises to whom they may be and are required to supply energy under the special order, they shall be liable in respect of each default to a penalty not exceeding forty shillings for each day on which the default occurs.

(2) Where the local authority are not themselves the undertakers, and the undertakers make default in supplying energy to the public lamps to which they may be and are required to supply energy under the special order, the undertakers shall be liable in respect of each default to a penalty not exceeding forty shillings for each lamp, and for each day on which the default occurs.

(3) Whenever the undertakers make default in supplying energy in accordance with the terms of the Board of Trade regulations they shall be liable to such penalties as are prescribed by the regulations in that behalf.

(4) Provided that the penalties to be inflicted on the undertakers under this section shall in no case exceed in the aggregate in respect of any defaults

(c) See *Clegg, Parkinson & Co.* v. *Earby Gas Co.*, *ante*, p. 1545. But this section only applies in the case of consumers to whom the undertakers are bound to make a supply. In the case of other consumers supplied by special agreement an action is maintainable for breach of the agreement (*Morris and Bastert* v. *Loughborough Corporation*, [1908] 1 K. B. 205; 71 J. P. 521).

not being wilful defaults on the part of the undertakers the sum of fifty pounds for any one day, and provided also that in no case shall any penalty be inflicted in respect of any default if the court are of opinion that the default was caused by inevitable accident or force majeure or was of so slight or unimportant a character as not materially to affect the value of the supply.

Price (*d*).

Methods of charging.

31.—(1) The undertakers may charge for energy supplied by them to any ordinary consumer (otherwise than by agreement)—

(1) By the actual amount of energy so supplied ; or

(2) By the electrical quantity contained in the supply ; or

(3) By such other method as may for the time being be approved by the Board of Trade.

(2) Provided that where the undertakers charge by any method so approved by the Board of Trade, any consumer who objects to that method may by one month's notice in writing require the undertakers to charge him at their option by the actual amount of energy supplied to him, or by the electrical quantity contained in the supply, and thereafter the undertakers shall not, except with the consumer's consent, charge him by any other method.

(3) Provided also, that before commencing to supply energy through any distributing main for the purposes of general supply, the undertakers shall, if the local authority are not themselves the undertakers, give notice to the local authority, and, if the local authority are themselves the undertakers, by public advertisement, by what method they propose to charge for energy supplied through that main ; and, where the undertakers have given any such notice, they shall not be entitled to change that method of charging except after one month's notice of the change has been given by them, if the local authority are not themselves the undertakers to the local authority, and in any case to every consumer of energy who is supplied by them from the main.

Maximum prices.

32.—(1) The prices to be charged by the undertakers for energy supplied by them shall not exceed those stated in that behalf in the special order or in the case of a method of charge approved by the Board of Trade, such price as the Board of Trade determine on approving the method.

(2) Provided that if, in a case where the local authority are not themselves the undertakers, either the local authority or the undertakers (*e*), at any time after the expiration of seven (*e*) years after the commencement of the special order, make a representation to the Board of Trade that the prices or methods of charge stated in the special order or approved by the Board of Trade ought to be altered, the Board of Trade, after such inquiry as they may think fit, may make an order varying the prices or methods of charge stated in the special order or so approved as aforesaid, or substituting other prices or methods of charge in lieu thereof, and the prices or methods of charge so varied or substituted shall have effect on and after such day as may be mentioned in the order, as if they had been stated in the special order: Provided also that the prices and methods of charge for the time being in force may be altered in like manner at any time after the expiration of any or every period of seven (*e*) years after they were last altered.

Other charges by agreement.

33. Subject to the provisions of the special order and of the principal Act, and to the right of the consumer to require that he shall be charged according to some one or other of the methods above mentioned, the undertakers may make any agreement with a consumer as to the price to be charged for energy, and the mode in which those charges are to be ascertained, and may charge accordingly (*f*).

(*d*) See the Electric Lighting Act, 1882, ss. 19–21, *ante*, p. 1746, and notes. Orders authorising municipal electrical undertakings now frequently contain what is known as the Bermondsey clause. See *The Times*, June 29th, 1904.

(*e*) But see now s. 10 of the Electric Lighting Act, 1909, *post*, p. 2117, making five years the ordinary period of revision of prices, and allowing consumers to make a representation.

(*f*) If persons who are not entitled to require a supply under the Act make an agreement with the undertakers for a supply of electrical energy, they may bring an action

Price to public lamps.

34. Where the local authority are not themselves the undertakers, the price to be charged by the undertakers and to be paid to them for all energy supplied to the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the local authority and the undertakers, and, in case of difference, shall be determined by arbitration, regard being had to the circumstances of the case and the distributing or other mains (if any) which may have to be laid for the purpose, and the prices charged to ordinary consumers in the district.

ELECTRIC INSPECTORS.

Appointment of electric inspectors.

35.—(1) The local authority, so long as they are not themselves the undertakers, and, while the local authority are themselves the undertakers, the Board of Trade, on the application of any consumer or of the undertakers, may appoint and keep appointed, one or more competent and impartial person or persons to be electric inspectors under the special order.

(2) If, in a case where the local authority are not themselves the undertakers, no electric inspector is appointed by the local authority, or the inspection of electric lines and works is imperfectly attended to by the local authority, or the local authority themselves become the undertakers for the purposes of the special order, the Board of Trade, on the application of any consumer, or of the undertakers, may appoint, and keep appointed, one or more competent and impartial person or persons to be electric inspectors under the special order.

Duties of electric inspectors.

36.—(1) The duties of an electric inspector under the special order shall be as follows:—

(a) The inspection and testing, periodically and in special cases, of the undertakers' electric lines and works and the supply of energy given by them;

(b) The certifying and examination of meters: and

(c) Such other duties in relation to the undertaking as may be required of him under the provisions of the special order or of the Board of Trade regulations.

(2) The local authority, with the approval of the Board of Trade, or the Board of Trade, if the inspector is appointed by them, may prescribe the manner in which and the times at which any such duties are to be performed by an electric inspector, and also the fees to be taken by him, and those fees shall be accounted for and applied as may be directed by the local authority or the Board of Trade, as the case may be.

Remuneration of electric inspectors.

37.—(1) The local authority may pay to any electric inspector appointed by them under the special order such reasonable remuneration (if any) as they may determine, and that remuneration may be in addition to, or in substitution for, any fees directed to be paid to electric inspectors in respect of their duties under the special order or the Board of Trade regulations, according as the local authority determine.

(2) Where the local authority are themselves the undertakers, they shall pay to every electric inspector appointed under the provisions of the special order such reasonable remuneration (if any) as may be determined by the Board of Trade, and that remuneration may be in addition to, or in substitution for, any fees which are directed to be paid to electric inspectors for services rendered by them under the special order or the Board of Trade regulations, as may be settled by that Board; and where any such remuneration is settled to be in substitution for fees, any fees payable by any party other than the undertakers, shall, in lieu of being paid to the electric inspector for his own use, be due and paid to him on behalf and for the use of the undertakers, and shall be carried by them to the credit of the local rate.

against the undertakers to recover damages for an alleged breach of the agreement, there being no clear words in the statute confining the remedy to proceedings to recover a penalty under clause 30, *supra* (*Morris and Bastert, Ltd.* v. *Loughborough Corporation*, [1908] 1 K. B. 205; 71 J. P. 521).

See also *Bourne* v. *Marylebone Corporation*, (1909) 72 J. P. 306; 24 T. L. R. 613.

As to stamp duty, see the Electric Lighting Act, 1909, s. 19, *post*, p. 2119.

38.—(1) The undertakers shall send to the Board of Trade notice of any accident by explosion, or fire, and also of any other accident of such kind as to have caused, or to be likely to have caused, loss of life, or personal injury which has occurred in any part of the undertakers' works or their circuits, or in connection with those works or circuits, and also notice of any loss of life or personal injury occasioned by any such accident. The notice shall be sent by the earliest practicable post after the accident occurs, or, as the case may be, after the loss of life or personal injury becomes known to the undertakers (*g*). Notice of accidents and inquiries by Board of Trade.

If the undertakers fail to comply with the provisions of this sub-section, they shall be liable, for each default, to a penalty not exceeding twenty pounds.

(2) The Board of Trade may also, if they deem it necessary, appoint any electric inspector or other fit person to inquire and report as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with the undertakers' works, whether notice of the accident has or has not been received from the undertakers, or as to the manner and extent in and to which the provisions of the special order and the principal Act, and of the Board of Trade regulations, so far as those provisions affect the safety of the public, have been complied with by the undertakers; and any person appointed under this section, not being an electric inspector, shall for the purposes of his appointment have all the powers of an electric inspector under the special order.

TESTING AND INSPECTION.

39. On the occasion of the testing of any main of the undertakers reasonable notice thereof shall be given to the undertakers by the electric inspector, and the testing shall be carried out at such suitable hours as, in the opinion of the inspector, will least interfere with the supply of energy by the undertakers, and in such manner as the inspector thinks expedient, but, except under the provisions of an order made in each case in that behalf by the Board of Trade, he shall not be entitled to have access to or interfere with the mains of the undertakers at any points other than those at which the undertakers have reserved for themselves access to the said mains: Provided that the undertakers shall not be held responsible for any interruption in the supply of energy which may be occasioned by or required by the inspector for the purpose of any such testing as aforesaid. Provided also that the testings shall not be made in regard to any particular portion of a main oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the Board of Trade. Testing of mains.

40. An electric inspector, if and when required to do so by any consumer, shall, on payment by the consumer of the prescribed fee, test the variation of electric pressure at the consumer's terminals, or make such other inspection and testing of the service lines, apparatus, and works of the undertakers upon the consumer's premises as may be necessary for the purpose of determining whether the undertakers have complied with the provisions of the special order and the Board of Trade regulations. Testing of works and supply on consumer's premises.

41.—(1) Where the local authority are not themselves the undertakers, the undertakers shall at such places, within a reasonable distance from a distributing main, establish at their own cost and keep in proper condition such reasonable number of testing stations, as the local authority think proper and sufficient for testing the supply of energy by the undertakers through the main, and shall place thereat proper and suitable instruments of a pattern to be approved by the Board of Trade, and shall connect those stations by means of proper and sufficient electric lines with the mains, and supply energy thereto for the purpose of the testing. Undertakers, not being local authority, to establish testing stations.

(*g*) As to the responsibility of the undertakers, see clause 77, *post*, p. 1946.
See also Regulation A 15 of the Board of Trade Regulations, 1895; Regulation 8 of the Board of Trade Regulations under s. 4 of the Electric Lighting Act, 1888, *ante*, p. 1810; s. 19 of the Factory and Workshop Act, 1901, which requires notice to be given to the factory inspector for the district; and ss. 1 and 2 of the Notice of Accidents Act, 1894, requiring notice to be given to the Board of Trade.

(2) If any dispute arises between the local authorities and the undertakers as to whether the number of the testing stations and the distance from the main at which they are established is reasonable or excessive, or as to any excessive or improper use of energy for the testing, or as to the performance by the undertakers of their duties under this section, that dispute shall be determined by arbitration.

(3) Where the local authority are themselves the undertakers, a court of summary jurisdiction may upon the application of any ten consumers direct the undertakers, at their own cost, to establish at such places, within a reasonable distance from a distributing main, and keep in proper condition, such reasonable number of testing stations, as the court think proper and sufficient for testing the supply of energy by the undertakers through the main, and thereupon (*h*) the undertakers shall establish such testing places, and provide thereat such proper and suitable instruments of a pattern to be approved by the Board of Trade as the court direct, and they shall connect those stations by means of proper and sufficient electric lines with the mains, and supply energy thereto for the purpose of the testing.

Undertakers to keep instruments on their premises.

42. The undertakers shall set up and keep upon all premises from which they supply energy by any distributing mains such suitable and proper instruments of such pattern and construction as may be approved or prescribed by the Board of Trade, and shall take and record, and keep recorded, such observations as the Board of Trade may prescribe, and any observations so recorded shall be receivable in evidence.

Readings of instruments to be taken.

43.—(1) The undertakers shall keep in efficient working order all instruments which they are required by or under the special order to place, set up, or keep at any testing station or on their own premises, and any electric inspector appointed under the special order may examine and record the readings of those instruments, and any readings so recorded shall be receivable in evidence.

(2) Where the local authority are not themselves the undertakers, the examinations and readings under this section must be made at such times and in such manner as may be directed by the authority by whom the inspector is appointed.

Electric inspector may test undertakers' instruments.

44. Any electric inspector appointed under the special order shall have the right to have access at all reasonable hours to the testing stations and premises of the undertakers for the purpose of testing the electric lines and instruments of the undertakers, and ascertaining if they are in order, and in case they are not in order he may require the undertakers forthwith to have them put in order.

Representation of undertakers at testings.

45. The undertakers may, if they think fit, on each occasion of the testing of any main or service line, or the testing or inspection of any instruments of the undertakers by any electric inspector, be represented by some officer or other agent, but that officer or agent shall not interfere with the testing or inspection.

Undertakers to give facilities for testing.

46. The undertakers shall afford all facilities for the proper execution of the special order with respect to inspection and testing and the readings and inspection of instruments, and shall comply with all the requirements of or under the special order in that behalf; and in case the undertakers make default in complying with any of the provisions of this section they shall be liable in respect of each default to a penalty not exceeding five pounds, and to a daily penalty not exceeding one pound.

Report of results of testing.

47.—(1) Every electric inspector shall, on the day immediately following that on which any testing has been completed by him under the special order, make and deliver a report of the results of his testing to the authority or person by whom he was required to make the testing, and to the undertakers, and that report shall be receivable in evidence.

(2) If the undertakers or any such authority or person are or is dissatisfied with any report of any electric inspector, they or he may appeal to the Board of Trade against the report, and thereupon the Board of Trade shall inquire

(*h*) There seems to be no right of appeal, even from the refusal of the application by the court of summary jurisdiction.

into and decide upon the matter of the appeal, and their decision shall be final and binding on all parties.

48.—(1) Save as otherwise provided by the special order or by the Board of Trade regulations, all fees and reasonable expenses (*i*) of an electric inspector shall, unless agreed be ascertained by a court of summary jurisdiction, or (where the inspector is appointed by them) by the Board of Trade, and shall be paid by the undertakers, and if a local authority are the undertakers may be recovered summarily as a civil debt (*j*). Expenses of electric inspector.

(2) Provided that where the report of an electric inspector, or the decision of the Board of Trade, shows that any consumer was guilty of any default or negligence, the fees and expenses shall, on being ascertained as above mentioned, be paid by the consumer as the court or the Board, by whom the fees are ascertained, having regard to the report or decision, direct, and may be recovered summarily as a civil debt.

(3) Provided also, that in any proceedings for penalties under the special order the fees and expenses of an electric inspector incurred in connection with the proceedings shall be payable by the complainant or defendant as the court direct.

Meters.

49 (*k*). *The amount of energy supplied by the undertakers to any ordinary consumer under the special order, or the electrical quantity contained in the supply (according to the method by which the undertakers elect to charge), hereinafter referred to as "the value of the supply," shall, except as otherwise agreed* (*l*) *between the consumer and the undertakers, be ascertained by means of an appropriate meter duly certified under the provisions of the special order.* Meters to be used except by agreement.

50 (*k*). *A meter shall be considered to be duly certified under the provisions of the special order if it be certified by an electric inspector appointed under the special order to be a correct meter, and to be of some construction and pattern, and to have been fixed and to have been connected with the service lines in some manner approved by the Board of Trade, and every such meter is hereinafter referred to as a "certified meter": Provided that where any alteration is made in any certified meter, or where any meter is unfixed or disconnected from the service lines, that meter shall cease to be a certified meter unless and until it is again certified as a certified meter under the provisions of the special order.* Meter to be certified.

51 (*k*). *An electric inspector, on being required to do so by the undertakers or by any consumer, and on payment of the prescribed fee* (*m*) *by the party so requiring him, shall examine any meter intended for ascertaining the value of the supply, and shall certify it as a certified meter if he considers it entitled to be so certified.* Inspector to certify meter.

52. Where the value of the supply is under the special order required to be ascertained by means of an appropriate meter, the undertakers shall, if required by any consumer, supply him with an appropriate meter, and shall, if required, fix it upon the premises of the consumer and connect the service lines therewith and procure the meter to be duly certified under the provisions of the special order, and for those purposes may authorise and empower any officer or person to enter upon the premises at all reasonable times and execute all necessary works and do all necessary acts; provided that previously Undertakers to supply meters if required to do so.

(*i*) That is, expenses specifically incurred by an electric inspector in making tests and inspections, but not salary appointed to him, nor the general expenses of his laboratory and staff (*Crawford* v. *City of London Electric Lighting Co.* (1899), 67 L. J. Q. B. 942; 78 L. T. 841); and compare s. 49 of the City of London Electric Lighting Order, 1899, confirmed by 62 & 63 Vict. c. cclxxv.

(*j*) That is under ss. 6 and 35 of the S. J. A., 1879.

(*k*) As to ss. 49, 50, 51, 53, see s. 11 of the Electric Lighting Act, 1909, *post*, p. 2117, which in effect repealed them and substituted new sections contained in the schedule thereto. The substitution takes effect "subject to such adaptations (if any) as may be necessary," even in the case of Acts and Orders passed or confirmed before the Act of 1909.

(*l*) See *Gravesend and Northfleet Tramways, Ltd.* v. *Gravesend Corporation* (1910), 74 J. P. 156; 8 L. G. R. 445.

(*m*) Prescribed under clause 36 (2), *ante*, p. 1936.

to supplying any such meter the undertakers may require the consumer to pay to them a reasonable sum in respect of the price of the meter, or to give security therefor, or (if he desires to hire the meter) may require him to enter into an agreement for the hire of the meter as hereinafter provided.

Meters not to be connected or disconnected without notice.

53 (*n*). *No consumer shall connect any meter used or to be used under the special order for ascertaining the value of the supply with any electric line through which energy is supplied by the undertakers, or disconnect any such meter from any such electric line, unless he has given to the undertakers not less than forty-eight hours' notice in writing of his intention to do so, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings.*

Consumer to keep his meter in proper order.

54.—(1) Every consumer shall at all times at his own expense keep all meters belonging to him (*o*), whereby the value of the supply is to be ascertained, in proper order for correctly registering the value, and in default of his so doing the undertakers may cease to supply energy through the meter.

(2) The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times. Provided that all reasonable expenses of and incident to any such taking off, removing, testing, inspecting, and replacing, and the procuring the meter to be again duly certified where the re-certifying is thereby rendered necessary, shall, if the meter is found to be not in proper order, be paid by the consumer, but if it is found to be in proper order all expenses connected therewith shall be paid by the undertakers.

Power to the undertakers to let meters.

55. The undertakers may let for hire any meter for ascertaining the value of the supply, and any fittings thereto, for such remuneration in money and on such terms with respect to the repair of the meter and fittings, and for securing the safety and return to the undertakers of the meter and fittings, as may be agreed upon between the hirer and the undertakers, or, in case of difference, determined by the Board of Trade, and that remuneration shall be recoverable by the undertakers summarily as a civil debt (*p*).

Undertakers to keep meters let for hire in repair.

56. The undertakers shall, unless the agreement for hire otherwise provides, at all times, at their own expense, keep all meters let for hire by them to any consumer, whereby the value of the supply is ascertained, in proper order for correctly registering that value, and in default of their doing so the consumer shall not be liable to pay rent for the meters during such time as the default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times: Provided that the expense of procuring any such meter to be again duly certified, where that re-certifying is thereby rendered necessary, shall be paid by the undertakers.

Differences as to correctness of meter to be settled by inspector.

57. If any difference arises between any consumer and the undertakers as to whether any meter, whereby the value of the supply is ascertained (whether belonging to the consumer or to the undertakers), is or is not in proper order for correctly registering the value, or as to whether that value has been correctly registered in any case by any meter, that difference shall be determined upon the application of either party by an electric inspector or, where the local authority are the consumers, by an inspector to be appointed by the Board of Trade, and that inspector shall also order by which of the parties the costs of and incidental to the proceedings before him shall be paid, and the decision of the inspector shall be final and binding on all parties.

Subject as aforesaid, the register of the meter shall be conclusive evidence (*q*) in the absence of fraud of the value of the supply.

Undertakers to pay expenses of providing new meters where method of charge altered.

58. Where any consumer who is supplied with energy by the undertakers from any distributing main is provided with a certified meter for the purpose of ascertaining the value of the supply and the undertakers change the method

(*n*) See note (*k*) *ante*, p. 1939.
(*o*) As to meters hired from the undertakers, see clauses 55, 56, *infra*.
(*p*) That is, under ss. 6 and 35 of the S. J. A., 1879.
(*q*) Compare the Gasworks Clauses Act, 1871, s. 20, *ante*, p. 1542, as to registers of gas meters.

of charging for energy supplied by them from the main, the undertakers shall pay to that consumer the reasonable expenses to which he may be put in providing a new meter for the purpose of ascertaining the value of the supply according to the new method of charging, and those expenses may be recovered by the consumer from the undertakers summarily as a civil debt (*r*).

Undertakers may place meters to measure supply or to check measurement.

59. In addition to any meter which may be placed upon the premises of any consumer to ascertain the value of the supply, the undertakers may place upon his premises such meter or other apparatus as they may desire for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer or the number of hours during which the supply is given, or the maximum power taken by the consumer, or any other quantity or time connected with the supply: Provided that the meter or apparatus shall be of some construction and pattern and shall be fixed and connected with the service lines in some manner approved by the Board of Trade, and shall be supplied and maintained entirely at the cost of the undertakers, and shall not, except by agreement, be placed otherwise than between the mains of the undertakers' and consumer's terminals.

MAPS.

Map of area of supply to be made.

60.—(1) The undertakers shall forthwith after commencing to supply energy under the special order cause a map to be made of the area of supply, and shall cause to be marked thereon the line and depth below the surface of all their then existing mains, service lines, and other underground works and street boxes, and shall once in every year cause that map to be duly corrected so as to show the then existing lines. The undertakers shall also, if so required by the Board of Trade or the Postmaster-General, cause to be made sections showing the level of all their existing mains and underground works other than service lines. The said map and sections shall be made on such scale or scales as the Board of Trade prescribe.

(2) Every map and section so made or corrected, or a copy thereof, marked with the date when it was made or last corrected, shall be kept by the undertakers at their principal office within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and those applicants may take copies of it or any part thereof. The undertakers may demand and take from every such applicant such fee not exceeding one shilling for each inspection of the map, section, or copy, and such further fee not exceeding five shillings for each copy of it, or any part thereof, taken by the applicant, as they prescribe.

(3) The undertakers shall, if required by the Board of Trade or the Postmaster-General, or, where the local authority are not themselves the undertakers, by the local authority, supply to them or him a copy of any such map or section and cause that copy to be duly corrected so as to agree with the original or originals thereof as kept for the time being at the office of the undertakers.

(4) If the undertakers fail to comply with any of the requirements of this section they shall for each default be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding two pounds.

NOTICES, ETC.

Notices, etc., may be printed or written.

61. Notices, orders, and other documents under the special order may be in writing or in print, or partly in writing and partly in print, and where any notice, order, or document requires authentication by the local authority, the signature thereof by the clerk or surveyor to the local authority shall be sufficient authentication.

Service of notices, etc.

62.—(1) Any notice, order, or document required or authorised to be served upon any body or person under the special order or the principal Act may be served by being addressed to that body or person, and being left or transmitted through the post to the following addresses respectively:

(a) in the case of the Board of Trade, the office of the Board of Trade;
(b) in the case of the Postmaster-General, the General Post Office;

(*r*) That is, under ss. 6 and 35 of the S. J. A. 1879.

(c) in the case of any county council, the office of that council;
(d) in the case of any local authority, the office of that local authority;
(e) in the case of the undertakers, where the undertakers are not a local authority, the registered office of the undertakers;
(f) in the case of a company having a registered office, at that registered office, and in the case of a company having an office or offices, but no registered office, the principal office of that company;
(g) in the case of any other person, the usual or last-known place of abode of that person.

(2) A notice, order, or document by this Schedule required or authorised to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises) without further name or description.

(3) A notice, order, or document by the special order required or authorised to be served on the owner or occupier of premises may be served by delivering it, or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can with reasonable diligence be delivered, by fixing it on some conspicuous part of the premises.

(4) Subject to the provisions of the special order as to cases of emergency, where the interval of time between the service of any notice or document under the provisions of the special order and the execution of any works, or the performance of any duty or act, is less than seven days, the following days shall not be reckoned in the computation of that time; that is to say, Sunday, Christmas Day, Good Friday, any bank holiday under and within the meaning of the Bank Holiday Act, 1871, and any Act amending that Act, and any day appointed for public fast, humiliation, or thanksgiving.

34 & 35 Vict. c. 17.

REVOCATION OF SPECIAL ORDER.

Revocation of order where undertakers are insolvent.

63. If the Board of Trade, in any case where a local authority are not the undertakers, at any time after the commencement of the special order, have reason to believe that the undertakers have made any default in executing works or supplying energy in accordance with the provisions of that order, and that that default is in consequence of the insolvency of the undertakers, and that by reason of that insolvency the undertakers are unable fully and efficiently to discharge the duties and obligations imposed upon them by that order, the Board of Trade may after such inquiry as they may think necessary, and after considering any representations of the local authority, revoke that order as to the whole or (with the consent of the undertakers) as to any part of the area of supply.

Revocation of order where undertaking cannot be carried on with profit.

64. If in any case where a local authority are not the undertakers, the undertakers at any time after the commencement of the special order represent to the Board of Trade that the undertaking cannot be carried on with profit, and ought to be abandoned, the Board of Trade shall inquire into the truth of the representation, and if upon that inquiry they are satisfied of the truth of the representation they may, if in their discretion they think fit, revoke the special order as to the whole or (with the consent of the undertakers and of the local authority) as to any part of the area of supply.

Revocation where local authority are undertakers and works are not executed.

65. If in a case where the local authority are themselves the undertakers, the Board of Trade, at any time after the commencement of the special order, have reason to believe that the undertakers have made default in executing works or supplying energy in accordance with the provisions of the special order, the Board of Trade may, after such inquiry as they may think necessary, revoke the special order as to the whole or (with the consent of the undertakers) any part of the area of supply upon such terms as the Board of Trade think just.

Revocation of order with consent.

66. In addition to any other powers which the Board of Trade may have in that behalf, they may revoke the special order at any time with the consent and concurrence of the undertakers, and, where the local authority are not themselves the undertakers, also of the local authority upon such terms as the Board of Trade think just.

67. If the Board of Trade, in any case where the local authority are not themselves the undertakers, at any time revoke the special order as to the whole or any part of the area of supply, under any of the provisions of the special order, the following provisions shall have effect: Provisions where order revoked.

(a) The Board of Trade shall serve a notice of the revocation upon the undertakers and upon the local authority, and shall in that notice fix a date at which the revocation shall take effect, and from and after that date all the powers and liabilities of the undertakers under the special order or this Act, for the supply of energy within such area, or part thereof as aforesaid, shall absolutely cease and determine.

(b) Within two months after the service of the notice by the Board of Trade upon the local authority, the local authority, if they think fit, may by notice in writing require the undertakers to sell, and thereupon the undertakers shall sell, to them so much of the undertaking or such part thereof as aforesaid as is within the district of the local authority, upon terms of paying the then value of all land, buildings, works, materials, and plant of the undertakers suitable to and used by them for the purposes of the undertaking or such part thereof as aforesaid, that value being agreed or estimated in manner directed by the Electric Lighting Act, 1888, in the case of purchases effected by the local authority under section two of that Act (*s*).

(c) Where any purchase is so effected, the undertaking, or part thereof so purchased, shall vest in the local authority, freed from any debts, mortgages, or similar obligations of the undertakers, or attaching to the undertaking; and the revocation of the special order, as to the whole of the area of supply, or such part thereof as aforesaid, shall extend only to the revocation of the rights, powers, authorities, duties, and obligations of the undertakers from whom the undertaking, or such part thereof as aforesaid, is purchased in relation to the supply of energy within that area or part thereof, and, save as aforesaid, the special order shall remain in full force within that area or part thereof in favour of the local authority, by whom the undertaking or part thereof is purchased as aforesaid.

(d) Where no purchase has been effected under the preceding provisions of this section, the local authority, and any body or person who may be liable to repair any street or part of a street in which any works of the undertaker have been placed, may (subject however to any agreement between the local authority or that body or person and the undertakers providing for the removal of those works by the undertakers) forthwith remove those works with all reasonable care, and the undertakers shall pay to the local authority, or other such body or person as aforesaid, such reasonable costs of the removal, and of the reinstatement of the street or part of a street as may be specified in a notice to be served on the undertakers by the local authority or other body or person, or (if so required by the undertakers, within one week after the service of the notice upon them) as may be determined by arbitration.

If the undertakers fail to pay such reasonable costs as aforesaid within one month after the service upon them of the notice, or the delivery of the award of the arbitrator (as the case may be) the local authority, or other such body or person as aforesaid may, without any previous notice to the undertakers (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of any such works as aforesaid, either by public auction or private sale, and for such sum or sums and to such person or persons as they may think fit; and may, out of the proceeds of the sale, pay and reimburse themselves the amount of the costs so specified or settled as aforesaid and of the costs of sale and the balance (if any) of the proceeds of the sale shall be paid over by them to the undertakers.

(e) In case the local authority or any body or person may be entitled to compensation for any damage sustained by them by reason or in

(*s*) *Ante*, p. 1807.

consequence of the execution of any works within such area, or part thereof as aforesaid, or the exercise of any powers granted by the special order to the undertakers, or for any expenses to which that local authority, body, or person may have been put in removing any works of the undertakers within the area, or part thereof, under the provisions of the special order, that compensation shall be a first charge on any money that may have been deposited or secured by the undertakers under the provisions of the special order in respect of that area, or part thereof, and which may not have been repaid or released by the undertakers, and that money shall be applied rateably in satisfying those claims, and in every such case the amount of compensation to be paid in respect of the various claims and the persons to whom it is to be paid, shall be determined by arbitration.

Provisions where local authority are undertakers and order is revoked.

68.—(1) If the Board of Trade, in a case where the local authority are themselves the undertakers, at any time revoke the special order as to the whole or any part of the area of supply, any persons who may be liable to repair any street or part of a street within that area or part thereof in which any works of the undertakers have been placed, may forthwith remove those works with all reasonable care, and the undertakers shall pay to those persons such reasonable costs of the removal as are specified in a notice to be served on the undertakers by those persons, or if so required by the undertakers within one week after the service of the notice upon them as may be determined by arbitration.

(2) If the undertakers fail to pay such reasonable costs as aforesaid within one month after the service upon them of such notice or the delivery of the award of the arbitrator (as the case may be), such persons as aforesaid may without any previous notice to the undertakers (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of any such works as aforesaid either by public auction or private sale, and for such sum or sums and to such person or persons as they think fit, and may out of the proceeds of the sale pay and reimburse themselves the amount of the costs so specified or determined as aforesaid, and of the costs of sale, and the balance (if any) of the proceeds of the sale shall be paid over by them to the undertakers.

GENERAL.

Remedying of system and works.

69.—(1) If at any time it is established to the satisfaction of the Board of Trade—

(a) that the undertakers are supplying energy otherwise than by means of a system which has been approved by the Board of Trade or (except in accordance with the provisions of the special order) have permitted any part of their circuits to be connected with earth or placed any electric line above ground; or

(b) that any electric lines or works of the undertakers are defective, so as not to be in accordance with the provisions of the special order or the Board of Trade regulations; or

(c) that any work of the undertakers or their supply of energy is attended with danger to the public safety, or injuriously affects any telegraphic line of the Postmaster-General,

the Board of Trade may by order specify the matter complained of, and require the undertakers to abate or discontinue it within such period as is therein limited in that behalf, and if the undertakers make default in complying with the order they shall be liable to a penalty not exceeding twenty pounds for every day during which the default continues.

(2) The Board of Trade may also if they think fit by the same or any other order forbid the use of any electric line or work as from such date as may be specified in that behalf until the order is complied with, or for such time as may be so specified, and if the undertakers make use of any such electric line or work while the use thereof is so forbidden they shall be liable to a penalty not exceeding one hundred pounds for every day during which the user continues.

(3) In any case of non-compliance with an order under this section, whether a pecuniary penalty has been recovered or not the Board of Trade, if in their

opinion the public interest so requires, may revoke the special order on such terms as they think just.

70.—(1) The Board of Trade regulations for the time being in force shall within one month after they have come into force, as made or last altered, be printed at the expense of the undertakers, and a true copy thereof, certified by or on behalf of the undertakers, shall be kept by the undertakers at their principal office within the area of supply, and supplied to any person demanding them at a price not exceeding sixpence for each copy, and where the local authority are not themselves the undertakers, a like copy shall also be forthwith served upon the local authority. Publication of regulations.

(2) If the undertakers make default in complying with the provisions of this section they shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding five pounds.

71. Where any security is required under the special order to be given to or by the undertakers, that security may be by way of deposit or otherwise, and of such amount as may be agreed upon between the parties, or as in default of agreement may be determined, on the application of either party, by a court of summary jurisdiction, and that court may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the court shall be final and binding on all parties: Provided that where any such security is given by way of deposit the party to whom the security is given shall pay interest at the rate of four per centum per annum on every sum of ten shillings so deposited for every six months during which it remains in their hands. Nature and amount of security.

72.—(1) All things required or authorised under the special order to be done by, to, or before the Board of Trade, may be done by, to, or before the President or secretary or assistant secretary of the Board. Proceedings of Board of Trade.

(2) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be those orders without further proof, unless the contrary is shown.

(3) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the order or act so certified.

73.—(1) Where the special order provides for any consent or approval of the Board of Trade, the Board may give that consent or approval subject to terms or conditions, or may withhold their consent or approval, as in their discretion they may think fit. Approval or consent of Board of Trade.

(2) All costs and expenses of or incident to any approval, consent, certificate, or order of the Board of Trade or of any inspector or person appointed by the Board of Trade, including the cost of any inquiry or tests for the purpose of determining whether the same should be given or made, to such an amount as the Board of Trade certify to be due, shall be borne and paid by the applicant therefor.

Provided that where the approval is given by the Board of Trade to any plan, pattern, or specification, they may require such copies of the plan, pattern, or specification as they think fit to be prepared and deposited at their office at the expense of the applicant, and may, as they think fit, revoke any approval so given, or permit the approval to be continued, subject to such modifications as they think necessary.

74. Where the Board of Trade— Notice of approval of Board of Trade, etc., to be given by advertisement.

(1) upon the application of the undertakers, give any approval or grant any extension of any time limited for the performance of any duties by the undertakers; or

(2) in a case where the local authority are not themselves the undertakers, revoke the special order upon the application of the local authority or the undertakers as to the whole or any part of the area of supply; or

(3) in a case where the local authority are themselves the undertakers revoke the special order as to the whole or any part of the area of supply,

notice that the approval has been given, or the extension of time granted, or the revocation made, shall, if the Board of Trade so direct, be published by public advertisement once at least in each of two successive weeks in some one and the same local newspaper by the undertakers, or, where the application for revocation has been made by the local authority, by the local authority.

Notice of application for extension of time, etc., to be given to local authority.

75. If, in a case where the local authority are not themselves the undertakers, any application is made to the Board of Trade to extend any time limited for the performance of any duties by the undertakers, notice of the application shall be served on the local authority by the undertakers, and an opportunity shall be given to the local authority to make representations or objections with reference thereto.

Recovery and application of penalties.

76.—(1) All penalties, fees, expenses, and other moneys recoverable under the special order, or under the Board of Trade regulations, the recovery of which is not otherwise specially provided for, may be recovered summarily in manner provided by the Summary Jurisdiction Acts.

(2) Any penalty recovered on prosecution by an officer of the local authority, in a case where the local authority are not themselves the undertakers, shall, if there is an electric inspector for the time being appointed by the local authority, be paid to that officer and by him to the local authority, and shall be applied in aid of the local rate.

(3) Any penalty recovered on prosecution by any other body or person, or any part thereof, may, if the court so direct, be paid to that body or person.

Undertakers to be responsible for all damages.

77. The undertakers shall be answerable for all accidents, damages, and injuries happening through the act or default of the undertakers, or of any person in their employment, by reason of or in consequence of any of the undertakers' works, and shall save harmless all authorities, bodies, and persons by whom any street is repairable, and all other authorities, companies, and bodies collectively and individually, and their officers and servants, from all damages and costs in respect of those accidents, damages and injuries (*t*).

As to mortgages.

78. Nothing in the special order shall prevent the undertakers, in a case where a local authority are not the undertakers, from borrowing money on the security of mortgages of the undertaking, or shall make the consent or approval of the Board of Trade necessary to the validity or effect of any such mortgage:

Provided that every mortgage of the undertaking shall be deemed to comprise all purchase money which may be paid to the undertakers in the event of any sale or transfer of the undertaking or any part thereof, under section two of the Electric Lighting Act, 1888, or under the special order, and that any mortgage granted by the undertakers shall not be a charge upon the undertaking, or any part thereof, in the event of the undertaking or that part being sold or transferred as aforesaid, and that every mortgage deed granted by the undertakers shall be endorsed with notice to that effect.

Saving for Postmaster-General.

79. Nothing in the special order shall affect any right or remedy of the Postmaster-General under the principal Act or the Telegraph Acts, 1863 to 1897, and all provisions contained in the special order in favour of the Postmaster-General shall be construed to be in addition to and not in modification of the provisions of those Acts.

Saving rights of the Crown in the foreshore.

80. Although any shore, bed of the sea, river, channel, creek, bay, or estuary is included in the area of supply, nothing in the special order shall authorise the undertakers to take, use, or in any manner interfere with any portion of that shore or bed of the sea, or of the river, channel, creek, bay, or estuary, or any right in respect thereof belonging to the Queen's most Excellent Majesty in right of her Crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade on behalf of her Majesty (which consent the Board of Trade may give), neither shall anything in the special order contained extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or authorities vested in or enjoyed or exercisable by the Queen's Majesty.

(*t*) See *Holliday* v. *National Telephone Co.*, [1899] 2 Q. B. 392; *Solomons* v. *Stepney Borough Council* (1905), 69 J. P. 360; 3 L. G. R. 912.

Compare 33 & 34 Vict. c. 78, s. 55, *ante*, p. 1530, and see notes thereto.

81. Nothing in the special order shall exonerate the undertakers from any indictment, action, or other proceedings for nuisance in the event of any nuisance being caused or permitted by them (*u*). Undertakers not exempted from proceedings for nuisance.

82. Nothing in the special order shall exempt the undertakers or their undertaking from the provisions of, or deprive the undertakers of the benefits of, any general Act relating to electricity, or to the supply of, or price to be charged for, energy, which may be passed after the passing of the Act confirming the special order (*v*). Provision as to general Acts.

* * * * *

THE BODIES CORPORATE (JOINT TENANCY) ACT, 1899.

(62 & 63 VICT. c. 20.) (*x*)

An Act for enabling Bodies Corporate to hold Property in Joint Tenancy.
[9th August 1899.]

1.—(1) A body corporate shall be capable of acquiring and holding any real or personal property in joint tenancy in the same manner as if it were an individual; and where a body corporate and an individual, or two or more bodies corporate, become entitled to any such property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy, they shall be entitled to the property as joint tenants. Power for corporations to hold property as joint tenants.

(*u*) Compare 10 & 11 Vict. c. 15, s. 29, *ante*, p. 1401; and 34 & 35 Vict. c. 41, s. 9, *ante*, p. 1539, and see notes thereto. A plaintiff when walking in the public highway passed close to an electric lamp-post beside which was a chamber sunk into the street. As he passed, an explosion took place under ground which caused the metal plate to open and a flash to emanate. It was held that the fact of an explosion having happened was *primâ facie* evidence of negligence (*Farrell* v. *Limerick Corporation* (1912), 45 Ir. L. T. 169). But in England at any rate negligence need not be proved. Thus where a municipal corporation supplied electricity under a provisional order under the Electric Lighting Acts, 1882 and 1888, and containing a clause in the terms of this section, it was held that they were liable in damages for an explosion occasioned by a leakage of electricity from one of their mains which generated a gas escaping into the plaintiff's premises in an adjoining street (*Midwood* v. *Manchester Corporation*, [1905] 2 K. B. 597; 60 J. P. 348).

The plaintiffs were the owners of electric cables which had been laid under certain public streets. The defendants were the owners of hydraulic mains which had been laid under the same streets under statutory powers. The mains burst in four different places, in each case damaging the plaintiff's cables. No negligence was attributed to the defendants. It was held that the doctrine of *Rylands* v. *Fletcher* ((1868), L. R. 3 H. L. 330; 33 J. P. 70) applies not only to cases in which the dangerous thing has escaped from the defendant's land on to the plaintiff's land and done damage there, but also to cases in which the site of the plaintiff's injury was occupied by him only under a licence and not under any right of property in the soil, and that in the absence of statutory authorisation of the nuisance the defendants were liable for the damage caused by the bursting of their mains, notwithstanding that they had not been guilty of any negligence (*Charing Cross, West End and City Electricity Supply Co.* v. *London Hydraulic Power Co.*, (1914) 30 T. L. R. 441).

(*v*) Clauses 83 and 84 relate only to the application of this Schedule to Scotland and Ireland, and are therefore omitted.

As to the omission of the Appendix, see note (*g*), *ante*, p. 1919.

(*x*) This statute alters the law as it existed ever since Litt. ss. 281, 296, 297; Co. Litt. 182, 189 b., 190; 2 Bla. Com. 184; *Bennet* v. *Holbech* (1672), 2 Saund. 316 a.; *Law Guarantee and Trust Society* v. *Bank of England* (1890), 24 Q. B. D. 406. But by s. 264 of the Lunacy Act, 1890, it had already been enacted that lands acquired for the purposes of that Act might be conveyed where more than one local authority was interested to all the local authorities interested as joint tenants; and by s. 6 of the National Debt (Stockholders Relief) Act, 1892, that stock [*i.e.*, stock transferable in the books of the Bank of England] may be transferred to and held in the names of an individual and a body corporate, or of two or more bodies corporate, and any such holding shall in its relation to the Bank be deemed a joint tenancy.

Provided that the acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions (*y*) as attach to the acquisition and holding of property by a body corporate in severalty.

(2) Where a body corporate is joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant.

Short title.

2. This Act may be cited as "The Bodies Corporate (Joint Tenancy) Act, 1899."

THE BATHS AND WASHHOUSES ACT, 1899.

(62 & 63 VICT. c. 29.) (*z*)

An Act to amend the Baths and Washhouses Acts. [9th August 1899.]

41 & 42 Vict. c. 14.

Whereas it is expedient to amend the provisions of the Baths and Washhouses Act, 1878, *with respect to the use which may be made of baths provided under the Baths and Washhouses Act*, 1846 *to* 1896 :

. . . . . .

Short title.

1. This Act may be cited for all purposes as "The Baths and Washhouses Act, 1899," and this Act and the Baths and Washhouses Acts, 1846 to 1896, may be cited together for all purposes as the Baths and Washhouses Acts, 1846 to 1899.

Amendment of 41 & 42 Vict. c. 14, s. 5.

2. From and after the passing of this Act the following proviso to section five of the Baths and Washhouses Act, 1878 (*a*), viz.,—

"Provided always, that no covered or open swimming bath, when closed, may be used for music or dancing,"

shall be repealed.

Provided always—

(a) That the commissioners appointed under the Baths and Washhouses Acts, 1846 to 1899, or any other body for the time being acting in the execution of those Acts, which commissioners or other body are hereinafter referred to as "such commissioners," shall, before any such bath is used for music or dancing, obtain such licence as may be required for the use of a place for that purpose under any enactment in force in the area for which such commissioners act, or, if no such enactment is in force, obtains a licence from the county council of the county in which the district of such commissioners is situate (*c*) :

(b) That no portion of the premises in respect of which the licence is granted be let otherwise than occasionally to any person or persons,

(*y*) *E.g.*, in certain cases the necessity for a licence in mortmain. See the Mortmain and Charitable Uses Act, 1888, *ante*, p. 1830, and note (*e*).

(*z*) See 9 & 10 Vict. c. 74, *ante*, p. 1372; 10 & 11 Vict. c. 61, *ante*, p. 1438; 41 & 42 Vict. c. 14, *ante*, p. 1669; 45 & 46 Vict. c. 30, *ante*, p. 1705.

(*a*) *Ante*, p. 1670.

(*c*) The effect of the proviso appears to be that in places to which the provisions of the Disorderly Houses Act, 1751, as to music and dancing apply, viz., places within twenty miles of the cities of London and Westminster, and not within the county of Middlesex, before the bath can be used for music or dancing, a licence must be obtained under that Act, as amended by the L. G. A., 1888; that where Part IV. of the P. H. A., 1890, *ante*, p. 860, is in force a licence must be obtained from the licensing justices; and that in any other place in an administrative county the county council are empowered to grant the necessary licence, unless there is some special enactment in operation making other provision for the grant of licences for music or dancing.

corporate or otherwise, and that no money for admission be taken at the doors (*d*) :

(c) That such commissioners be responsible for any breach of the conditions on which the licence is granted, which may occur during any entertainments given on such premises by their permission.

3. In places (*e*) in which the Disorderly House Act, 1751, is in force, a licence under that Act for music or dancing, or for both purposes, may be granted to such commissioners at any annual licensing meeting of the council authorised to grant such a licence, or at any other meeting of such council duly convened with fourteen days' previous notice. Licence by county council. 25 Geo. 2, c. 36.

4. This Act shall not apply to the administrative county of London (*f*). Extent of Act.

THE COMMONS ACT, 1899.

(62 & 63 VICT. c. 30.) (*g*)

An Act to amend the Inclosure Acts, 1845 *to* 1882, *and the Law relating to Commons and Open Spaces.* [9th August 1899.]

PART I.

REGULATION OF COMMONS.

1.—(1) The council of an urban or rural district (*h*) may make (*i*) a scheme for the regulation and management of any common (*k*) within their district (*l*) with a view to the expenditure of money (*m*) on the drainage, levelling, and improvement (*n*) of the common, and to the making of byelaws (*o*) and regulations for the prevention of nuisances and the preservation of order on the common. Power for district council to make scheme for regulation of common.

(2) The scheme may contain any of the statutory provisions for the benefit of the neighbourhood mentioned in section seven of the Commons Act, 1876 (*p*). 39 & 40 Vict. c. 56.

(*d*) Possibly if no money is taken at the doors tickets may nevertheless be sold elsewhere and admission refused without a ticket.

In *Att.-Gen.* v. *Walthamstow U. D. C.*, [1910] 1 Ch. 347; 74 J. P. 147, the defendants obtained the requisite licence and let the baths in their district to persons who used them for entertainments comprising music, and at these entertainments money for admission was taken at pay boxes placed on the defendants' land just outside the building. It was held that, there being no provisions in the Act making commissioners responsible for the acts of their lessees, the court could not compel the defendants to take proceedings against their lessees at the risk of a decision that what was done by them was not an unlawful evasion of the Act, and that as the defendants did not claim the right to take money at the doors, or to authorise their lessees to do so, no injunction ought to be granted.

(*e*) In the cities of London or Westminster or within twenty miles thereof, but not in the administrative county of Middlesex.

(*f*) As to the administrative county of London, see the Baths and Washhouses Act, 1896.

(*g*) See the Commons Act, 1876, *ante*, p. 1627.

(*h*) As to county boroughs, see s. 13.

(*i*) As to amending or supplementing schemes, see s. 9.

(*k*) For definition of "common" see s. 15, *post*, and as to excepted commons, see s. 14, *post*.

(*l*) In a case of a common extending into two or more districts the powers of s. 57 of the L. G. A., 1894, *ante*, p. 1043, might be useful in relation to a joint scheme.

(*m*) As to expenses, see ss. 5, 11, and 12, *post*.

(*n*) This word is not defined, nor is s. 5 of the Commons Act, 1876, *ante*, p. 1629, expressly incorporated.

(*o*) As to byelaws, see s. 10, *post*.

(*p*) *Ante*, p. 1629.

(3) The scheme shall be in the prescribed (*q*) form, and shall identify by reference to a plan the common to be thereby regulated, and for this purpose an ordnance survey map shall, if possible, be used.

Procedure for making scheme.

2.—(1) Not less than three months before the making of a scheme under this Part of this Act the council shall give the prescribed (*q*) notice of their intention to make it, and shall state thereby where copies of the draft of the scheme may be obtained, and where the plan therein referred to may be inspected. They shall also send to the Board of Agriculture as soon as possible a copy of the draft and plan.

(2) During the three months aforesaid any person may obtain copies of the draft on payment of a sum not exceeding sixpence per copy, and may inspect the plan at the prescribed place, and may make in writing to the Board of Agriculture any objection or suggestion with respect to the scheme or plan.

(3) After the expiration of the said three months the Board of Agriculture shall take into consideration any objections or suggestions so made, and for that purpose may, if they think fit, direct that an inquiry be held by an officer of the Board.

(4) The Board of Agriculture may by order approve of the scheme, subject to such modifications, if any, as they may think desirable, and thereupon the scheme shall have full effect.

Provided that if, at any time before the Board have approved of the scheme, they receive a written notice of dissent either—

(a) from the person entitled as lord of the manor or otherwise to the soil of the common; or

(b) from persons representing at least one-third in value of such interests in the common as are affected by the scheme,

and such notice is not subsequently withdrawn, the Board shall not proceed further in the matter (*r*).

Management of regulated common.

3. The management of any common regulated by a scheme made by a district council under this Part of this Act shall be vested in the district council.

Provision for delegation of powers of district council to parish council.

4. A rural district council may delegate to a parish council any powers of management conferred by this Part of this Act on the district council in relation to any commons within the parish, and thereupon the Public Health Acts shall apply as if the parish council were a parochial committee (*s*).

Power for parish council to contribute to expenses.

56 & 57 Vict. c. 73.

5. A parish council may agree to contribute the whole or any portion of the expenses of and incidental to the preparation and execution of a scheme for the regulation and management of any common within their parish (including any compensation paid under this Act), and the provisions of section eleven of the Local Government Act, 1894 (*t*), shall apply to the

(*q*) See s. 15, *post*. The Board of Agriculture have prescribed a form of scheme, and a form of notice of intention to make such scheme, by Commons Regulations, dated May 1st, 1900 (Stat. R. & O., 1900, p. 29), in Appendix II., *post*, p. 2242. As to whether the scheme will be conclusive as to the limits and extent of the common, see *Cook* v. *Conservators of Mitcham Common*, [1901] 1 Ch. 387.

(*r*) Note the differences from an application for regulation under s. 12 (5) of the Commons Act, 1876, *ante*, p. 1636, and note (*h*) thereon.

(*s*) See P. H. A., 1875, s. 202, *ante*, p. 466. The power of delegation can only be exercised after the scheme is made, as the scheme itself cannot confer rights on a parish council. A rural district council may delegate its powers for a specified period, only resuming them at such time or under such conditions as it may prescribe. The Board of Agriculture and Fisheries are of opinion that the power to make byelaws under a scheme is not a power of management which can be delegated under this section.

(*t*) This section provides as follows: (1) A parish council shall not, without the consent of a parish meeting, incur expenses or liabilities which will involve a rate exceeding three-

expenses incurred by the parish council for the purposes of such contribution.

6. No estate, interest, or right (*u*) of a profitable or beneficial nature in, over, or affecting any common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any scheme under this Part of this Act without compensation being made or provided for the same by the council making the scheme, and such compensation shall, in case of difference, be ascertained and provided in the same manner as if it were for the compulsory purchase and taking, or the injurious affecting, of lands under the Lands Clauses Acts (*x*). Provision for compensation.

7. A district council may acquire the fee simple or any estate in or any rights in or over any common regulated by a scheme under this Part of this Act by gift or by purchase by agreement, and hold the same without licence in mortmain (*y*) for the purposes of the scheme, and the expenses thereby incurred by the district council shall be part of their expenses of executing the scheme (*z*). Power for district council to acquire property in regulated common.

8. Section twenty of the Commons Act, 1876 (which relates to the digging of gravel) (*a*), shall apply to any common regulated by a scheme under this Part of this Act. Digging of gravel. 39 & 40 Vict. c. 56.

9. The power to make a scheme under this Part of this Act shall include power to amend or supplement any such scheme. Power to amend scheme.

pence in the pound for any local financial year, or which will involve a loan. (2) A parish council shall not, without the approval of the county council, incur any expense or liability which will involve a loan. (3) The sum raised in any local financial year by a parish council for their expenses (other than expenses under the adoptive Acts), shall not exceed a sum equal to a rate of sixpence in the pound on the rateable value of the parish at the commencement of the year, and for the purpose of this enactment the expression "expenses" includes any annual charge, whether of principal or interest, in respect of any loan. (4) Subject to the provisions of this Act, the expenses of a parish council and of a parish meeting, including the expenses of any poll, shall be paid out of the poor rate; and where there is a parish council that council shall pay the said expenses of the parish meeting of the parish; and the parish council, and where there is no parish council the chairman of the parish meeting, shall, for the purpose of obtaining payment of such expenses, have the same powers as a board of guardians have for the purpose of obtaining contributions to their common fund. (5) The demand note for any rate levied for defraying the expenses of a parish council or a parish meeting, together with other expenses, shall state in the prescribed form the proportion of the rate levied for the expenses of the council or meeting and the proportion (if any) levied for the purpose of any of the adoptive Acts.

As to the limits of amount laid down by this section, see *R.* v. *Stoke Parish Council* (1900), 64 J. P. 343; 82 L. T. 198.

An alternative method by which the expenses of promoting a scheme for the regulation of a common in a rural district can be thrown upon the parish or parishes more particularly benefiting is for the rural district council to apply to the L. G. B. for a "special expenses" order (see P. H. A., 1875, s. 229, and P. H. A., 1890). The Board would probably not issue such an order, however, unless the parish council or councils had unreasonably refused to contribute.

(*u*) The right of maintaining a publichouse sign-post in a spot where it had stood for over forty years was held to be a right of a profitable or beneficial nature within the words of a similar enactment (*Hoare* v. *Metropolitan Board of Works* (1874), L. R. 9 Q. B. 296; 38 J. P. 535). See generally on this subject *Att.-Gen.* v. *Amhurst* (1879), 23 Sol. J. 443, and judgment in full, Hunter on Open Spaces, 2nd ed., App. III., p. 468.

(*x*) See 8 & 9 Vict. c. 18, s. 68, *ante*, p. 1339. Sections 25—57 of the same Act, *ante*, pp. 1328—1337, provide for settling cases of disputed compensation.

(*y*) See note (*c*), *ante*, p. 1830.

(*z*) As to expenses, see ss. 5, 11 and 12. It has been suggested that the power of acquiring the fee, etc., may be exercised by one council in respect of a common regulated by another council, and that this may be found useful in the case of a common in a rural district near to a town in an urban district.

(*a*) *Ante*, p. 1639.

Provisions as to byelaws.

10. The provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six, both inclusive, of the Public Health Act, 1875 (*b*), and any enactment amending or extending those sections, shall apply to all byelaws made in pursuance of a scheme under this Part of this Act, and any fine imposed by any such byelaw shall be recoverable summarily and be payable to the council in whom the management of the common is vested.

Expenses.

11.—(1) All expenses incurred by the Board of Agriculture in relation to a scheme under this Part of this Act, and all expenses of and incidental to the preparation and execution of the scheme (including any compensation paid under this Act) (*c*) shall be paid by the district council.

(2) All expenses incurred by a district council under this Part of this Act shall be treated as part of the expenses of the district council in the execution of the powers conferred by the Public Health Acts (*d*).

(3) A district council may for the purposes of this Act borrow money in like manner and subject to the like conditions as they may borrow for defraying expenses incurred in the execution of the Public Health Acts, and the said Acts shall apply accordingly (*e*).

Power for urban district council to contribute towards expenses.

12. The council of any urban district may, with a view to the benefit of the inhabitants of their district, and subject to the approval of the Local Government Board, enter into an undertaking with any other council making or having made a scheme under this Part of this Act to contribute any portion of the expenses incurred by that council in executing the scheme.

Application to county boroughs.

13. This Part of this Act shall apply to the council of a county borough in like manner as if that council were the council of an urban district.

Saving for commons regulated under other Acts.

41 & 42 Vict. c. cxxvii.

14. A scheme under this Part of this Act shall not apply to any common which is or might be the subject of a scheme made under the Metropolitan Commons Acts, 1866 to 1878, or is regulated by a provisional order under the Inclosure Acts, 1845 to 1882, or has been acquired, or managed as an open space, under the powers of the Corporation of London (Open Spaces) Act, 1878, or any Act therein referred to, or is the subject of any private or local and personal Act of Parliament having for its object the preservation of the common as an open space (*f*), or is subject to byelaws made by a parish council under section eight of the Local Government Act (1894) (*g*).

Definitions.

15. In this Part of this Act, unless the context otherwise requires,—

The expression "common" shall include any land subject to be inclosed under the Inclosure Acts, 1845 to 1882, and any town or village green (*h*);

The expression "prescribed" shall mean prescribed by regulations made by the Board of Agriculture (*i*).

(*b*) *Ante*, pp. 431—444. Sections 16 and 17 of the Commons Act, 1876, *ante*, pp. 1638, 1639, do not apply to these byelaws.

(*c*) See s. 6, *supra*.

(*d*) And will, therefore, in an urban district not a borough, be payable out of the general district rate (see P. H. A., 1875, s. 207, *ante*, p. 468), and in a rural district out of the common fund (*ibid.*, s. 229, *ante*, p. 509). See, however, note (*t*), *supra*.

(*e*) See P. H. A., 1875, ss. 233 *et seq.*, *ante*, p. 519.

(*f*) See the Open Spaces Act, 1906, s. 2, *post*, p. 2059.

(*g*) This section enables a parish council to exercise with respect to any recreation ground, village green, open space, or public walk which is for the time being under their control or to the expense of which they have contributed, powers similar to those of local authorities under the P. H. A., 1875, s. 164, *ante*, p. 368, and the P. H. A., 1890, s. 44, *ante*, p. 857.

(*h*) As to town or village greens, see the Commons Act, 1876, s. 29, *ante*, p. 1642, and notes.

(*i*) See the Commons Regulations, dated May 1st, 1900 (Stat. R. & O., 1900, p. 29), *post*, p. 2242.

PART II.

Miscellaneous.

16.—(1) Surplus rents arising from field gardens may, in addition to the purposes for which they are now applicable (*k*), be applied for any of the purposes for which surplus rents arising from recreation grounds may be applied.

Surplus rents from field gardens and recreation grounds. 51 & 52 Vict. c. 41.

(2) Surplus rents arising from any field garden or recreation ground may be applied towards the redemption of any land tax, tithe rentcharge, or other charge on the garden or ground.

17. [*Amendment of* 50 *&* 51 *Vict. c.* 32 *as to open spaces.*] (*l*)

18. Any provisions with respect to allotments for recreation grounds, field gardens, or other public or parochial purposes contained in any Act relating to inclosure or in any award or order made in pursuance thereof, and any provisions with respect to the management of any such allotments contained in any such Act, order, or award, may, on the application of any district or parish council interested in any such allotment, be dealt with by a scheme of the Charity Commissioners in the exercise of their ordinary jurisdiction, as if those provisions had been established by the founder in the case of a charity having a founder (*m*).

Power to modify provisions as to recreation grounds, etc.

19. Section one hundred and fifty of the Inclosure Act, 1845 (*n*), shall have effect as if " two successive weeks " were therein inserted instead of " three successive weeks," and as if " one month " were therein inserted instead of three " calendar months."

Amendment of 8 & 9 Vict. c. 118.

20. Where notice has been given of any sitting, whether original or by adjournment, to be held by an officer of the Board of Agriculture under the Metropolitan Commons Acts, 1866 to 1878, that officer may, by notice to be published in such manner as the Board direct, adjourn the sitting without attending for the purpose of the adjournment (*o*).

Amendment of law as to adjournment of meetings.

21. (*p*) *Section twenty of the Metropolitan Commons Act*, 1866, *is hereby repealed, and* the Board of Agriculture shall include in an annual report to Parliament a statement of their proceedings under Part I. of this Act and under the Metropolitan Commons Acts, 1866 to 1878, during the year ending the thirty-first day of December then last past, with such particulars as to their proceedings under the last-mentioned Acts as are required by section twenty-one of the Metropolitan Commons Act, 1866 (*q*).

Annual report to Parliament. 29 & 30 Vict. c. 122.

(*k*) See the Commons Act, 1876, s. 27, *ante*, p. 1641. The same section regulates the application of surplus rents arising from recreation grounds.

(*l*) This section is repealed by s. 23 and the schedule to the Open Spaces Act, 1906, other provision having been made by that Act to the like effect.

(*m*) See the Charitable Trusts Act, 1853, ss. 54—59.

The Charity Commissioners are of opinion that the restrictive provisions of s. 19 of the Commons Act, 1876 (*ante*, p. 1639), are not affected by s. 18 of the Commons Act, 1899, and that accordingly the Charity Commissioners are not at liberty to sanction the sale or letting on building lease of any part of an allotment falling within the section first above mentioned. Hunter on Open Spaces, 2nd ed., p. 231, note.

(*n*) This section relates to notices of divisions of intermixed lands under s. 148 and exchanges of inconvenient allotments under s. 149 of the same Act.

(*o*) For procedure under the Metropolitan Commons Acts, see Hunter on Open Spaces, 2nd ed., pp. 264, 265.

(*p*) The S. L. R. A., 1908, repealed the italicised words in s. 21, the opening words of s. 23 and Schedule II. The Acts repealed (as having " been made unnecessary by " or being " inconsistent with subsequent enactments ") were the Inclosure Acts, 1756 and 1757, the Inclosure (Consolidation) Act, 1801, the Inclosure Act, 1821, the Common Fields Exchange Act, 1834, the Inclosure Acts, 1836 and 1840, and the Inclosure Act, 1845, ss. 121, 122.

(*q*) By this section the Board must, in their annual report, set forth in full every scheme

Restrictions on inclosures under scheduled Acts.

22.—(1) A grant or inclosure of common purporting to be made under the general authority of any of the Acts mentioned (*r*) in the First Schedule hereto or any Act incorporating the same, or any provisions thereof, shall not be valid unless it is either—

(a) specially authorised by Act of Parliament; or

(b) made to or by any Government Department; or

(c) made with the consent of the Board of Agriculture.

39 & 40 Vict. c. 56.

(2) The Board of Agriculture, in giving or withholding their consent under this section, shall have regard to the same considerations, and shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Board before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not.

epeal.

23. [*Repeal of Acts in Second Schedule.*] (*s*)

This repeal shall not affect the construction or effect of any local and personal Act of Parliament passed before the commencement of this Act, whereby any provisions of the said enactments are intended to be incorporated.

Short title.

24. This Act may be cited as "The Commons Act, 1899," and shall be read with the Inclosure Acts, 1845 to 1882.

SCHEDULES.

[S. 22.]

FIRST SCHEDULE.

ENACTMENTS RELATING TO INCLOSURES SUBJECT TO RESTRICTIONS UNDER THE ACT.

Session and Chapter.	Title or Short Title.
43 Eliz. c. 2	The Poor Relief Act, 1601.
17 Geo. 3, c. 53	The Clergy Residences Repair Act, 1776.
51 Geo. 3, c. 115	The Gifts for Churches Act, 1811.
58 Geo. 3, c. 45	The Church Building Act, 1818.
1 & 2 Will. 4, c. 42	The Poor Relief Act, 1831.
1 & 2 Will. 4, c. 59	The Crown Lands Allotments Act, 1831.
5 & 6 Will. 4, c. 69	The Union and Parish Property Act, 1835.
4 & 5 Vict. c. 38	The School Sites Act, 1841.
8 & 9 Vict. c. 18	The Lands Clauses Consolidation Act, 1845.
17 & 18 Vict. c. 112	The Literary and Scientific Institutions Act, 1854.

[S. 23.]

SECOND SCHEDULE (*s*).

certified by them during the year to which the report relates, and state the grounds of their approval, and the objections (if any) made to it and overruled, and all proceedings had in respect of these objections and the grounds on which they were overruled.

(*r*) These include the Lands Clauses Consolidation Act, 1845. See ss. 99—107 of that Act as to extinction of commoners' rights, *ante*, pp. 1354—1356.

(*s*) See note (*p*), *ante*, p. 1953.

THE TELEGRAPH ACT, 1899.

(62 & 63 VICT. c. 38.) (*t*)

An Act to make further Provision for the Improvement of Telephonic Communication, and otherwise with respect to Telegraphs. [9th August 1899.]

* * * * *

Payment of expenses of exercise of powers under telephone licence.

2.—(1) Where the council of a borough or an urban district are licensed (*u*) by the Postmaster-General to provide a system of public telephonic communication, they may defray the expenses of exercising the powers conferred by the licence in the case of a borough out of the borough fund or borough rate, and in the case of an urban district not a borough out of the rate out of which the general expenses of the council in the execution of the Public Health Acts are defrayed (*v*), and may borrow money for the purpose in accordance with the Public Health Acts (*x*), but in the case of

(*t*) In *Att.-Gen.* v. *Edison Telephone Co. of London* (1880), 6 Q. B. D. 244, it was held that the terms "telegrams" and "telegraphs" as used in the Telegraph Acts include telephonic messages and telephones, so that it is necessary for the purpose of setting up telephones and transmitting telephonic communications to obtain a licence from the Postmaster-General under s. 5 of the Telegraph Act, 1869, in order to avoid the infringement of his exclusive privilege under s. 4 of that Act. Moreover, the Electric Lighting Act, 1882, whilst it authorises local authorities to undertake the supply of electricity in certain cases for certain purposes, excludes from those purposes "the transmission of any telegram" (s. 3 (4), *ante*, p. 1736), and contains in s. 35, *ante*, p. 1750, a special saving for the exclusive privileges of the Postmaster-General. Consequently a licence from him is necessary in all cases where local authorities desire to provide a system of telephonic communication. This Act provides for their expenses when they have obtained such a licence. Section 1 relates merely to the grant of public moneys to the Postmaster-General for the purposes of the Telegraph Acts, and is therefore omitted.

(*u*) Under s. 5 of the Telegraph Act, 1869.

By s. 5 of the Telegraph Act, 1892, (1) Where the Postmaster-General has, either before or after the passing of this Act, licensed any company or person to transmit any telegrams within the meaning of the Telegraph Acts, 1863 to 1889, he may by the same or any other licence, authorise such company or person (in this Act referred to as "the licensee") during the time and within the area specified in the licence, to exercise the powers which are conferred on the Postmaster-General by the Telegraph Acts, 1863 and 1878, and by the provisions of this Act relating to provisional orders, or such of those powers as are specified in the licence, and thereupon the enactments conferring those powers or relating to the exercise thereof, including any penal provisions, shall apply accordingly: (2) Provided as follows:—(a) A licensee shall not exercise any powers under the said enactments except in an urban sanitary district or such area adjoining an urban sanitary district as is described in the licence: (b) Notwithstanding anything in the Telegraph Act, 1878, a licensee shall not exercise any powers under the said enactments without the consent, in London of the county council, and in any urban sanitary district outside London of the urban sanitary authority, and elsewhere of the county council, and shall be subject to any terms and conditions which the county council or urban sanitary authority may attach to any such consent, and shall comply with any regulations of such council or authority from time to time in force in relation to telegraphic lines.

The refusal of their consent by the urban sanitary authority under this section is not a "difference" between that body and the Postmaster-General which may be referred to a stipendiary magistrate or county court judge under s. 4 of the Telegraph Act, 1878 (*National Telephone Co.* v. *Tunbridge Wells Corporation* (1901), 85 L. T. 368, affirming 64 J. P. 756; 48 W. R. 686). The conditions which the urban authority are entitled to impose must not relate to matters entirely outside the scope of their duty as road authority. For instance, a condition that the wires should not be laid unless the licensees were prepared to provide an improved service at a reduced cost is not within the power of the urban autho rity to impose (*Postmaster-General* v. *London Corporation* (1898), 62 J. P. 380; 78 L. T. 120). But in the case of overhead wires they may impose conditions for securing the public safety (*Wandsworth District L. B.* v. *Postmaster-General* (1884), 4 Rail. & Can. Cas. 301). The regulations referred to in the latter part of the above section seem to mean byelaws under Part II., ss. 13 *et seq.* of the P. H. A., 1890, *ante*, p. 825.

(*v*) Usually the general district rate. See the P. H. A., 1875, s. 207, *ante*, p. 468.

(*x*) See P. H. A., 1875, ss. 233 *et seq.*, *ante*, p. 519.

a borough any money so borrowed shall be borrowed on the security of the borough fund or borough rate; and the council may, subject to the provisions of the Telegraph Acts, 1863 to 1897, and of the licence, exercise their powers under the licence throughout the area for which it is granted, although part of that area may be outside the borough or urban district (*y*).

. . . . .

Provisions as to existing companies.

3.—(1) Where any existing company have before the passing of this Act, under a licence from the Postmaster-General, provided a system of public telephonic communication in any exchange area (*z*), and it is proposed to grant a new licence to a local authority or to another company to provide public telephonic communication in the same exchange area, or any part thereof, then, if the existing company consent to it being made a condition of their licence—

(a) that they will not give favour or preference (*a*) to any person whomsoever within the area specified in the new licence, and will not, within that area, as a condition of giving a service, require from any person the grant of any facility except for the purpose of supplying telephonic communication to that person; and

(b) that their charges shall not, within the area specified in the new licence, exceed the maximum rates or fall below the minimum rates authorised in that behalf by the Postmaster-General within that area (*b*),

it shall be a condition of the grant of the new licence, that where it is proved to the satisfaction of the Postmaster-General that the existing company have incurred or contracted to incur, in the area specified in the new licence, material expenditure in laying down underground wires, and have by agreement with any local authority within that area acquired powers for that purpose, those powers shall continue for the period specified in the new licence for the duration thereof (*c*), but, subject as aforesaid, on the terms and conditions specified in the agreement (including any provisions thereof for determination on breach of covenant), except so far as they may be varied by any subsequent agreement with the local authority.

(*y*) Sub-sections (2) and (3) relate to Scotland and Ireland only, and are therefore omitted.

(*z*) Defined in sub-s. (6).

(*a*) The allowance of a commission for collecting messages is not a preference (*Reuter* v. *Electric Telegraph Co.* (1857), 6 E. & B. 341; 26 L. J. Q. B. 46).

In connection with the subject of charges the following cases should be noted.

A telephone company supplied the use of a telephone wire and apparatus under an agreement for three years at a rent payable quarterly. After the expiration of the three years the parties continued the agreement by mutual consent, but on the last day of a full quarter the company gave the customer notice determining the agreement forthwith and stating their intention to cut off the wire and remove the apparatus, at the same time demanding rent up to one day beyond the quarter. This rent was duly paid to and accepted by them, and the customer moved for an injunction to restrain the company from interfering with the wire and apparatus:—*Held*, that the agreement created the relation of landlord and tenant, and therefore the acceptance of the rent for the extra day was a waiver of the notice to determine the contract, and the injunction was granted (*Keith, Prowse & Co.* v. *National Telephone Co.*, [1894] 2 Ch. 147; 58 J. P. 373).

As to stamp duty on the ordinary form of agreement with a customer, see *National Telephone Co.* v. *Inland Revenue Commissioners*, [1900] A. C. 1; 64 J. P. 420.

(*b*) Section 2 of the Telegraph Act, 1885, gave the Postmaster-General general power for fixing the sums to be from time to time paid on account of the transmission of telegrams, which include telephonic communications.

(*c*) That is, of the powers, not of the licence (*National Telephone Co.* v. *Kingston-upon-Hull Corporation* (1903), 68 J. P. 62; 89 L. T. 291). An action by the telephone company against the local authority for the purpose of raising the question whether the duration of the powers conferred by the agreement was extended is not within the Public Authorities Protection Act, 1893, and consequently the defendants succeeding were only entitled to party and party costs (*National Telephone Co.* v. *Kingston-upon-Hull Corporation* (1904) 52 W. R. 26).

(2) Where an existing company is at the passing of this Act under a licence from the Postmaster-General supplying public telephonic communication in any exchange area, a licence to provide a system of public telephonic communication within the same area, or any part thereof, shall not be granted by the Postmaster-General to any person or body other than the council of a borough or urban district, unless it is shown to the satisfaction of the Postmaster-General that the application for the licence is approved by the council of each borough or urban district within which it is proposed by th application to establish a telephonic exchange.

(3) An existing company shall not, without the consent of the Postmaster-General given after the passing of this Act in each case, open an exchange in any exchange area in which they had not, before the passing of this Act, established an effective exchange.

(4) Where a local authority or a new company, under a licence from the Postmaster-General, provides a system of public telephonic communication in the whole or any part of an exchange area in competition with an existing company licensed by the Postmaster-General before the passing of this Act, then, if the existing company consent to it being made a condition of their licence—

(a) that they will not give favour or preference to any person whomsoever within the whole of the exchange area in question, and will not, within that exchange area as a condition of giving a service, require from any person the grant of any facility except for the purpose of supplying telephonic communication to that person; and

(b) that their charges shall not within the whole of the exchange area in question exceed the maximum rates and (where the company are empowered by agreement with the local authority to lay underground wires) shall not fall below the minimum rates authorised in that behalf by the Postmaster-General within the area specified in the new licence,

the licence of the existing company shall within the whole of the exchange area in question be extended and continue for the period specified in the new licence of the local authority or new company for the duration of such new licence, but, except as varied by this Act, the provisions of the licence of the existing company (including any provisions thereof for determination on breach of covenant) shall remain in force.

(5) If the licence of an existing company is, under the provisions of this section, extended in respect of any exchange area for a period of not less than eight years beyond the term existing at the passing of this Act, the company shall, at the request of any other licensee of the Postmaster-General providing public telephonic communication in the whole or any part of that exchange area, and under such circumstances and on such terms and conditions as may, within six months from the passing of this Act, be prescribed by an order of the Postmaster-General, made with the approval of the Treasury, afford all proper facilities for the transmission of telephonic messages between persons using the system of the company (either in the whole or in part of the exchange area, as the Postmaster-General may prescribe) and persons using the system of such other licensee, provided that the licensee so requiring intercommunication shall in any such case afford similar facilities.

(6) For the purposes of this section the expression "exchange area" means an exchange area as defined by an agreement made by an existing company with the Postmaster-General before the passing of this Act.

4. This Act may be cited as the Telegraph Act, 1899, and may be cited with the Telegraph Acts, 1863 to 1897. Short title.

THE SMALL DWELLINGS ACQUISITION ACT, 1899.

(62 & 63 VICT. c. 44.) (*d*)

An Act to empower Local Authorities to advance Money for enabling Persons to acquire the Ownership of Small Houses in which they reside.

[9th August 1899.]

Power of local authority to advance money to residents in houses for the purchase of houses.

1.—(1) A local authority (*e*) for any area may, subject to the provisions of this Act, advance money to a resident (*f*) in any house within the area for the purpose of enabling him to acquire the ownership (*g*) of that house; provided that any advance shall not exceed—

(a) four-fifths of that which in the opinion of the local authority is the market value of the ownership; nor

(b) two hundred and forty pounds; or, in the case of a fee simple or leasehold of not less than ninety-nine years unexpired at the date of the purchase, three hundred pounds;

and an advance shall not be made for the acquisition of the ownership of a house where in the opinion of the local authority the market value (*h*) of the house exceeds four hundred pounds.

(2) Every such advance shall be repaid with interest within such period not exceeding thirty years from the date of the advance as may be agreed upon.

(3) The interest shall be at such rate as may be agreed upon, not exceeding ten shillings above the rate at which the local authority can at the time borrow from the Public Works Loan Commissioners the money for the advance (*i*).

(4) The repayment may be made either by equal instalments of principal or by an annuity of principal and interest combined, and all payments on account of principal or interest shall be made either weekly or at periods not exceeding a half year, according as may be agreed.

(5) The proprietor of a house in respect of which an advance has been made may at any of the usual quarter days, after one month's written notice, and on paying all sums due on account of interest, repay to the local authority the whole of the outstanding principal of the advance, or any part thereof

(*d*) The object of this statute is to provide facilities for acquiring small dwellings similar to those for acquiring small holdings, as to which see now the Small Holdings and Allotments Act, 1908, s. 19. It may, however, be administered not by county councils only, but by any urban or rural district council who resolve to undertake to act under it subject to the provisions of s. 9. It is entirely permissive, no landlord being obliged to sell, nor any local authority absolutely compelled to advance money towards the purchase of any particular house or class of houses. It is limited to houses of the maximum value of £400.

(*e*) See s. 9, *post*.

(*f*) Who must also be the occupier. See s. 10 (1). As to suspension of the condition of residence, see s. 7. The resident, however, if a member of a local authority, would be disqualified under s. 46 of the L. G. A., 1894 (*ante*, p. 1024), where that section applies, the exception in that section under sub-s. (2) being expressly limited to cases of loans to and not from the local authority. But as regards advances to officers of the local authority there would seem to be no disqualification, as s. 193 of the P. H. A., 1875 (*ante*, p. 455), is not applicable.

(*g*) As to the meaning of ownership, see s. 10 (2), (3). It will be observed that advances can only be made in respect of houses actually erected.

(*h*) The L. G. B. have been advised that this expression means the market value of the freehold of the site and house.

(*i*) The extra ten shillings is intended to cover all the expenses of the local authority for valuation, investigation of title, certificate as to sanitary condition and repair, and legal expenses. See also note (*p*), *infra*.

The Public Works Loan Commissioners are authorised to lend the money under s. 9 (7), *post*.

being ten pounds or a multiple of ten pounds, and where the repayment is made by an annuity of principal and interest combined, the amount so outstanding and the amount by which the annuity will be reduced where a part of the advance is paid off, shall be determined by a table annexed to the instrument securing the repayment of the advance (*k*).

Procedure for obtaining advance.

2. Before making an advance under this Act in respect of a house a local authority shall be satisfied—

(a) that the applicant for the advance is resident or intends to reside in the house (*l*), and is not already the proprietor within the meaning of this Act (*m*) of a house to which the statutory conditions apply; and

(b) that the value of the ownership (*n*) of the house is sufficient; and

(c) that the title to the ownership is one which an ordinary mortgagee would be willing to accept; and

(d) that the house is in good sanitary condition and good repair (*o*); and

(e) that the repayment to the local authority of the advance is secured by an instrument vesting the ownership (including any interest already held by the purchaser) in the local authority subject to the right of redemption by the applicant, but such instrument shall not contain anything inconsistent with the provisions of this Act (*p*).

Conditions affecting house purchased by means of advance.

3.—(1) Where the ownership of a house has been acquired by means of an advance under this Act, the house shall, until such advance with interest has been fully paid, or the local authority have taken possession or ordered a sale under this Act (*q*), be held subject to the following conditions (in this Act referred to as the statutory conditions), that is to say:

(a) Every sum for the time being due in respect of principal or of interest of the advance shall be punctually paid:

(b) The proprietor of the house shall reside (*r*) in the house:

(c) The house shall be kept insured against fire to the satisfaction of the local authority, and the receipts for the premiums produced when required by them:

(d) The house shall be kept in good sanitary condition and good repair:

(e) The house shall not be used for the sale of intoxicating liquors, or in such a manner as to be a nuisance to adjacent houses (*s*):

(f) The local authority shall have power to enter the house by any person, authorised by them in writing for the purpose, at all reasonable times for the purpose of ascertaining whether the statutory conditions are complied with.

(*k*) No form is prescribed for this instrument. See further, s. 2 (e), *infra*.

(*l*) As to residence, see s. 10 (1), *post;* and as to intended residence, see s. 7, *post.*

(*m*) See s. 10 (3), *post.*

(*n*) See s. 10 (2), *post.*

(*o*) This condition necessarily implies that the house must be already built.

(*p*) It must have a table of repayments annexed. See s. 1 (5), *supra.* The costs in connection with the instrument, etc., seem to be payable by the applicant for the advance. In the absence of any such expression as is contained in the Building Societies Act, 1874, s. 42, there must be a reconveyance of the property to the mortgagor when the mortgage is paid off.

(*q*) See sub-ss. (2)—(5), and ss. 5 and 6, *post.*

(*r*) Subject to the provisions of s. 7, *post.*

(*s*) *Quære,* whether by the instrument vesting the ownership in the local authority, a stricter restriction as to the user of the house could be imposed than that implied by the word "nuisance." See s. 2 (e), *supra.* The user of the house for trade or for taking in lodgers is not prohibited by the Act, but this condition would exclude offensive trades. See s. 114 of the P. H. A., 1875, *ante*, p. 212, and notes.

(2) The proprietor of the house may with the permission of the local authority (which shall not be unreasonably withheld) (*t*) at any time transfer his interest in the house, but any such transfer shall be made subject to the statutory conditions (*u*).

(3) Where default is made in complying with the statutory condition as to residence, the local authority may take possession of the house (*x*), or order the sale of the house without taking possession (*y*).

(4) In the case of the breach of any condition other than that of punctual payment of the principal and interest of the advance, the authority shall, previously to taking possession or ordering a sale, by notice in writing delivered at the house and addressed to the proprietor, call on the proprietor to comply with the condition, and if the proprietor—

(a) within fourteen days after the delivery of the notice gives an undertaking in writing to the authority to comply with the notice; and

(b) within two months after the delivery of the notice complies therewith,

shall not take possession or order a sale, as the case may be.

(5) In the case of the bankruptcy of the proprietor of the house, or in the case of a deceased proprietor's estate being administered in bankruptcy under section one hundred and twenty-five of the Bankruptcy Act, 1883, the local authority may either take possession of the house or order the sale of the house without taking possession, and shall do so except in pursuance of some arrangement to the contrary with the trustee in bankruptcy (*z*).

46 & 47 Vict. c. 52.

Provisions as to personal liability and powers of proprietor.

4.—(1) Where the ownership of a house has been acquired by means of an advance under this Act, the person who is the proprietor shall be personally liable for the repayment of any sum due in respect of the advance until he ceases to be proprietor, by reason of a transfer made in accordance with this Act (*a*).

(2) The provisions of this Act requiring the permission of the local authority to the transfer of the proprietor's interest in a house under this Act shall not apply to any charge on that interest made by the proprietor, so far as the charge does not affect any rights or powers of the local authority under this Act.

Recovery of possession and disposal of house.

5.—(1) Where a local authority take possession of a house, all the estate, right, interest, and claim of the proprietor in or to the house shall, subject as in this section mentioned, vest in and become the property of the local authority, and that authority may either retain the house under their own management or sell or otherwise dispose of it as they think expedient.

(2) Where a local authority take possession of a house they shall, save as hereinafter mentioned, pay to the proprietor (*b*) either—

(a) such sum as may be agreed upon; or

(b) a sum equal to the value of the interest in the house at the disposal

(*t*) In the case of landlord and tenant, if licence to assign is unreasonably withheld, the tenant may assign without it (*Willmott* v. *London Road Car Co., Ltd.*, [1910] 2 Ch. 525; *West* v. *Gwynne*, [1911] 2 Ch. 1). But *quære* whether the same rule would apply here.

Permission is unnecessary for charges not affecting the rights or powers of the local authority. See s. 4 (2), *infra*.

(*u*) No special form of transfer is prescribed.

(*x*) See s. 5, *infra*.

(*y*) See s. 6, *infra*.

(*z*) The trustee in bankruptcy will become the proprietor for the purposes of the Act. See s. 10 (3), *post*, and s. 44 of the Bankruptcy Act, 1833. If an arrangement is made the condition as to residence may be suspended; see s. 7 (3) *post*.

(*a*) As to transfers, see s. 3 (2), *supra*.

(*b*) If possession is taken on the bankruptcy of the proprietor, it would seem that under s. 10 (3), *post*, payment should be made to the trustee.

of the local authority, after deducting therefrom the amount of the advance then remaining unpaid and any sum due for interest; and the said value, in the absence of a sale and in default of agreement, shall be settled by a county court judge as arbitrator, or if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge, and the Arbitration Act, 1889, shall apply to any such arbitration. 52 & 53 Vict. c. 49.

(3) The sum so payable to the proprietor if not paid within three months after the date of taking possession shall carry interest at the rate of three per cent. per annum from the date of taking possession.

(4) All costs of or incidental to the taking possession, sale, or other disposal of the house (including the costs of the arbitration, if any) incurred by the local authority, before the amount payable to the proprietor has been settled either by agreement or arbitration, shall be deducted from the amount otherwise payable to the proprietor.

(5) Where the local authority are entitled under this Act to take possession of a house, possession may be recovered (whatever may be the value of the house) by or on behalf of the local authority either under sections one hundred and thirty-eight to one hundred and forty-five of the County Courts Act, 1888 (*c*), or under the Small Tenements Recovery Act, 1838 (*d*), as in the cases therein provided for, and in either case may be recovered as if the local authority were the landlord and the proprietor of the house were the tenant. 51 & 52 Vict. c. 43. 1 & 2 Vict. c. 74.

Procedure as to ordering sale.

6.—(1) Where a local authority order the sale of a house without taking possession, they shall cause it to be put up for sale by auction, and out of the proceeds of sale retain any sum due to them on account of the interest or principal of the advance, and all costs, charges, and expenses properly incurred by them in or about the sale of the house, and pay over the balance (if any) to the proprietor (*e*).

(2) If the local authority are unable at the auction to sell the house for such a sum as will allow of the payment out of the proceeds of sale of the interest and principal of the advance then due to the authority, and the costs, charges, and expenses aforesaid, they may take possession of the house in manner provided by this Act, but shall not be liable to pay any sum to the proprietor.

Suspension of conditions as to residence.

7.—(1) An advance may be made to an applicant who intends to reside in a house, as if he were resident, if he undertakes to begin his residence

(*c*) These sections provide for the recovery of small tenements where the term has expired or been determined by notice to quit (s. 138), or for non-payment of rent (s. 139), for service of the summons (s. 141), for warrants to the high bailiffs (ss. 142, 143), for protection of the judge and other officers (s. 144), and of the landlord (s. 145). The procedure is by plaint and summons, order for possession, and warrant in case of disobedience. The usual time allowed for delivery of possession in cases under s. 138 is fourteen days, but in cases under s. 139 it must not be less than four weeks from the day of hearing. In case of proceedings for possession on breach of the condition as to payment of principal and interest, it would seem that the order for possession must give the time prescribed by s. 139, and, therefore, it may be more speedy to proceed under the Small Tenements Recovery Act, 1838. Moreover, it would seem that if the proprietor pays up all arrears and costs during the prescribed time, he will not be subject to be turned out.

(*d*) This Act provides for the issue of a warrant by the petty sessions court for giving up possession within a period not less than twenty-one, nor more than thirty, clear days from the date of the warrant (see *R.* v. *Hopkins* (1900), 64 J. P. 454). Seven days' notice of the application must be given, and it seems doubtful whether the justices have power to award costs (Stone's Justices' Manual, sub-tit. Landlord and Tenant).

(*e*) If the sale has been ordered on the bankruptcy of the proprietor, it seems that the trustee becomes proprietor for the purposes of the Act under s. 10 (3), and payment should be made to him.

therein within such period not exceeding six months from the date of the advance, as the local authority may fix, and in that case the statutory condition requiring residence (*f*) shall be suspended during that period.

(2) The local authority may allow a proprietor to permit, by letting or otherwise, a house to be occupied as a furnished house by some other person during a period not exceeding four months in the whole in any twelve months, or during absence from the house in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, and the condition requiring residence shall be suspended while the permission continues (*g*).

(3) Where the proprietor of a house subject to statutory conditions dies, the condition requiring residence shall be suspended until the expiration of twelve months from the death, or any earlier date at which the personal representatives transfer the ownership or interest of the proprietor in the course of administration; and where the proprietor of any such house becomes bankrupt, or his estate is administered in bankruptcy under section one hundred and twenty-five of the Bankruptcy Act, 1883, and in either case an arrangement under this Act (*h*) is made with the trustee in bankruptcy, the condition as to residence shall, if the local authority think fit, be suspended during the continuance of the arrangement.

List of advances.

8.—(1) A local authority shall keep at their offices a book containing a list of any advances made by them under this Act, and shall enter therein with regard to each advance—

(i.) a description of the house in respect of which the advance is made;
(ii.) the amount advanced;
(iii.) the amount for the time being repaid;
(iv.) the name of the proprietor for the time being of the house; and
(v.) such other particulars as the local authority may think fit to enter.

(2) The book shall be open to inspection at the office of the local authority during office hours free of charge.

Local authorities and rates.

9.—(1) A local authority for the purpose of this Act shall be the council of any county or county borough; and if the council of any urban district not being a county borough, or of any rural district, pass a resolution undertaking to act under this Act, that council shall, subject in the case of the council of a district containing a population according to the last census for the time being of less than ten thousand to the consent of the county council, be the local authority in that district for the purpose of this Act to the exclusion of any other authority (*i*): Provided that, if the council of any district are dissatisfied with any refusal (*k*) or failure of the county council to give their

(*f*) See s. 3 (1) (b), *ante*, and s. 10 (1).

(*g*) Compare the provisions of the House Occupiers Disqualification Removal Act, 1878, s. 2, and the Electoral Disabilities Removal Act, 1891.

(*h*) See s. 3 (5), *ante*.

(*i*) Under sub-s. (3), *infra*, the urban or rural district will, consequently, be freed from contributing to the expenses of the county council under the Act, but any resolution passed simply with that object, and without any intention on the part of the district council themselves to act upon their undertaking, would be clearly a breach of duty on their part.

(*k*) In a case in which a county council refused to give consent to an urban district council whose district did not contain a population of 10,000, taking action under this Act because no applications had been made thereunder, the L. G. B. stated that the mere fact of no application having been made to the district council for an advance afforded no sufficient reason for refusing to consider an application for consent to act, inasmuch as applications for such advances were not likely to be made to a council who had no power to act, and further, that the question whether a particular district council should be allowed to act should be considered with reference to such points as whether the council could efficiently administer the Act, and whether in the circumstances of the particular district the balance of advantage would be in favour of allowing the district council instead

consent, they may appeal to the Local Government Board, and the Local Government Board may, if they think fit, give their consent, and the consent so given shall have the same effect as the consent of the county council.

(2) Where the council of an urban or rural district becomes the local authority for the purposes of this Act, all the powers, rights, and liabilities of the county council in respect of advances already made by them under this Act for the purchase of the ownership of any house in the district shall vest in the council of the urban or rural district, subject to the payment by that council to the county council of the outstanding principal and interest of any such advance (*l*).

(3) All expenses of a local authority in the execution of this Act shall be paid in the case of a county out of the county rate, and in the case of a county borough, out of the borough fund or borough rate, and in the case of any urban or rural district out of any fund or rate applicable to the general purposes of the Public Health Acts (*m*); but no sum shall be raised in any urban or rural district the council of which becomes a local authority for the purposes of this Act on account of the expenses of a county council under this Act.

(4) If in any local financial year the expenses payable by a council and not reimbursed by the receipts under this Act exceed in a county a sum equal to one halfpenny, and in a county borough or urban or rural district a sum equal to one penny in the pound upon the rateable value of the county, county borough, or district, deducting in the case of a county the rateable value of any urban or rural district in the county, the council of which have become a local authority under this Act, no further advance under this Act shall be made by that council, until the expiration of five years after the end of that financial year or if those expenses at that date exceed one halfpenny or one penny in the pound, as the case may be, on the rateable value for the time being, until they fall below such sum.

(5) A local authority may borrow for the purposes of this Act in like manner as they may borrow, in the case of a county council for the purposes of the Local Government Act, 1888, and in the case of the council of a county borough for the purpose of section one hundred and six of the Municipal Corporations Act, 1882, and in the case of an urban or rural district council for the purpose of the Public Health Acts (*n*), and those Acts shall apply accordingly with the necessary modifications.

of the county council to make advances. The nature and character of the actual applications for advances seemed to the Board not to be very intimately connected with the question to be decided.

(*l*) The intention of the Act is that the district council should make the necessary payments, so as to relieve the county council from further responsibility. The district council ought not to keep the matter outstanding. They may, if necessary, borrow the amount required under sub-s. (5), *infra*.

(*m*) As to urban districts, see s. 207 of the P. H. A., 1875, *ante*, p. 468; and as to rural districts, see s. 229, *ante*, p. 509.

(*n*) See ss. 234 *et seq.* of the P. H. A., 1875, *ante*, p. 526. The particulars required by the L. G. B. in the case of applications for sanction to the borrowing of money by county borough councils and urban and rural district councils will be seen from the forms which are set out in Appendix II., *post*, p. 2527, tit. "Small Dwellings."

A local inquiry is not usually held unless this is necessitated by the debt of the district (see s. 234 (3) of the P. H. A., 1875). In such circumstances it is advisable to apply for sanction to borrow a round sum in order to avoid repeated inquiries.

Some inconvenience is experienced by some councils owing to the necessity of applying to the L. G. B. for sanction to a loan on each occasion that an advance is required. The Board have, however, informed several councils who have experience in the working of the Act that they are prepared to entertain applications for sanction to the borrowing of a lump sum estimated to be sufficient to cover a number of advances.

A local authority are at liberty to make an advance under the Act for the purpose of paying off an existing loan obtained from some other source upon mortgage of the property.

(6) Money borrowed under this Act shall not, in the case of a county council, be reckoned as part of the total debt of a county for the purposes of section sixty-nine, sub-section two, of the Local Government Act, 1888, and shall not, in the case of an urban or rural district council, be reckoned as part of their debt for the purpose of the limitation on borrowing under section two hundred and thirty-four, sub-section two, of the Public Health Act, 1875 (*o*).

51 & 52 Vict. c. 41.

38 & 39 Vict. c. 55.

(7) The Public Works Loan Commissioners may in manner provided by the Public Works Loans Act, 1875, lend any money which may be borrowed by a local authority for the purposes of this Act.

38 & 39 Vict. c. 89.

(8) Any capital money received or retained by a local authority in payment or discharge of any advance under this Act, or in respect of the sale or other disposal of any house taken possession of under this Act, shall be applied, with the sanction of the Local Government Board, either in repayment of debt or for any other purpose to which capital money may be applied.

(9) Separate accounts shall be kept by every local authority of their receipts and expenditure under this Act.

(10) In the application of this Act to the county of London any sanitary authority—

(a) shall have the same powers as an urban district council, and the expenses of such authority shall be paid out of the general rate or in the case of the city of London out of the consolidated rate; and

(b) may borrow in like manner as they can borrow for the purposes of the Metropolis Management Acts, 1855 to 1893; and those Acts shall apply with the necessary modifications.

Residence and ownership.

10.—(1) A person shall not be deemed for the purposes of this Act to be resident in a house unless he is both the occupier of and resident in that house.

(2) For the purposes of this Act "ownership" shall be such interest or combination of interests in a house as, together with the interest of the purchaser of the ownership, will constitute either a fee simple in possession or a leasehold interest in possession of at least sixty years unexpired at the date of the purchase.

(3) Where the ownership of a house is acquired by means of an advance under this Act, the purchaser of the ownership, or, in the case of any devolution or transfer, the person in whom the interest of the purchaser is for the time being vested, shall be the proprietor of the house for the purposes of this Act (*p*).

* * * * *

Short title.

16. This Act may be cited as the Small Dwellings Acquisition Act, 1899.

The sum advanced should not exceed four-fifths of the outstanding amount of the existing mortgage.

The L. G. B. have informed a district council that they were prepared to entertain an application under the Act for sanction to the use of money received from proprietors and not immediately required for repayment of a loan for the purpose of further advances under the Act, such advances to be made on terms which would admit of the repayment of the whole loan within the prescribed period.

(*o*) *Ante*, p. 526.

(*p*) Sections 11—15, inclusive, and the Schedules to the Act, relate only to the application of the Act to Scotland and Ireland, and are therefore omitted.

THE SALE OF FOOD AND DRUGS ACT, 1899.

(62 & 63 VICT. c. 51.) (*q*)

An Act to amend the Law relating to the sale of Food and Drugs.
[9th August 1899.]

Precautions against importation of agricultural and other produce insufficiently marked.

1.—(1) If there is imported into the United Kingdom any of the following articles (*r*), namely :

(a) margarine or margarine-cheese (*s*), except in packages conspicuously marked "Margarine" or "Margarine-cheese," as the case may require ; or

(b) [*adulterated or impoverished butter* (*other than margarine*) *or*] adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the [*butter or*] milk or cream has been so treated ; or

(c) condensed separated or skimmed milk, except in tins of other receptacles which bear a label whereon the words "Machine-skimmed Milk" or "Skimmed Milk," as the case may require, are printed in large and legible type ; or

(d) any adulterated or impoverished article of food (*t*) to which her Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated ;

the importer shall be liable, on summary conviction (*u*), for the first offence to a fine not exceeding fifty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

(2) The word "importer" shall include any person who, whether as owner, consignor, or consignee, agent, or broker, is in possession of, or in anywise entitled to the custody or control of, the article ; prosecutions for offences under this section shall be undertaken by the Commissioners of Customs ; and subject to the provisions of this Act this section shall have effect as if it were part of the Customs Consolidation Act, 1876 (*x*). 39 & 40 Vict. c. 36.

(3) The Commissioners of Customs shall, in accordance with directions given by the Treasury after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food (*y*) as may be necessary for the enforcement of the foregoing provisions of this section.

(*q*) See the Sale of Food and Drugs Act, 1875, and the Sale of Food and Drugs Act Amendment Act, 1879, *ante*, pp. 1577, 1691.

(*r*) This list of articles is enlarged by s. 5 (1) of the Butter and Margarine Act, 1907, *post*, p. 2074, and the words in clause (b) printed in italics have been repealed.

(*s*) See the Margarine Act, 1887, *ante*, p. 1800.

(*t*) See definition, s. 26, *post*.

(*u*) No appeal lies to quarter sessions on a question of fact (*R.* v. *Otto Monsted, Ltd.*, [1906] 2 K. B. 456 ; 70 J. P. 435). The warranty defence does not apply (*Kelly* v. *Lonsdale & Co.*, [1906] 2 K. B. 486 ; 70 J. P. 441).

As to the maximum fine in certain cases, see s. 5 (2) of the Butter and Margarine Act, 1907, *post*, p. 2074.

(*x*) See the Customs Consolidation Act, 1876, ss. 218 *et seq.*, as amended by the Customs and Inland Revenue Act, 1879, ss. 11, 12, and 14. Compare the powers of the Commissioners of Customs as to tea under the Sale of Food and Drugs Act, 1875, s. 30, *ante*, p. 1593. Under the Merchandise Marks Act, 1887, ss. 2, 16, the Customs are authorised to detain goods which are marked with a false trade description, but they do not exercise this power unless moved to do so by an informant who is prepared to give them security for any damages that might be recovered from them in respect of damage to the detained goods in the event of the information as to misdescription turning out incorrect. See s. 19, saving rights of action.

(*y*) See definition, s. 26, *post*.

(4) Where the Commissioners of Customs take a sample of any consignment in pursuance of such directions they shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories, and retain one part.

(5) In any proceeding under this section the certificate of the principal chemist of the result of the analysis shall be sufficient evidence of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness (*z*).

(6) If, in any case, the Commissioners of Customs are of opinion that an offence against this section has been committed, they shall communicate to the Board of Agriculture for their information the name of the importer and such other facts as they possess or may obtain as to the destination of the consignment.

(7) For the purposes of this section an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature.

Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such quantity as not to render the article injurious to health (*a*).

Power for Local Government Board or Board of Agriculture to sample articles of food.

2.—(1) The Local Government Board may, in relation to any matter appearing to that Board to affect the general interest of the consumer, and the Board of Agriculture may, in addition to any matter appearing to that Board to affect the general interests of Agriculture in the United Kingdom, direct an officer of the Board to procure for analysis samples of any article of food, and thereupon the officer shall have all the power of procuring samples conferred by the Sale of Food and Drugs Acts (*b*), and those Acts shall apply as if the officer were an officer authorised to procure samples under the Sale of Food and Drugs Act, 1875, except that—

(a) the officer procuring the sample shall divide the same into four parts, and shall deal with three of such parts in manner directed by section fourteen of the Sale of Food and Drugs Act, 1875 (*c*), as amended by this Act, and shall send the fourth part to the Board, and

(b) the fee for analysis (*d*) shall be payable to the analyst by the local authority of the place where the sample is procured.

(2) The Board shall communicate the result of the analysis of any such sample to the local authority, and thereupon there shall be the like duty and

(*z*) See the Sale of Food and Drugs Act, 1875, s. 21, and notes thereto, *ante*, p. 1588. In proceedings for an offence under this section as extended by s. 5 of the Butter and Margarine Act, 1907, the certificate of analysis by the principal chemist of the Government laboratories need not follow the form prescribed by s. 18 and the Schedule of the Sale of Food and Drugs Act, 1875 (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494).

This sub-section has been considerably extended and amended by s. 5 (3) of the Butter and Margarine Act, 1907, *post*, p. 2074. As to notifying the certificate to the importer, see s. 5 (4) of that Act.

(*a*) If it does render the article injurious to health, the addition may be an offence within the Sale of Food and Drugs Act, 1875, s. 3, *ante*, p. 1577. See also *Roose* v. *Perry & Co.* (1900), 44 Sol. J. 503.

(*b*) See the Sale of Food and Drugs Act, 1875, ss. 13—17, and the Sale of Food and Drugs Act Amendment Act, 1879, s. 3, *ante*, pp. 1584—1586, 1692, and notes thereto. The officers of the Boards mentioned in the section are also entitled to take proceedings as private individuals in the method prescribed by the Act of 1875; they are not limited in prosecutions at their instance to cases contemplated by this section (*Falconer* v. *Whyte*, [1908] S. C. (J.) 40).

(*c*) *Ante*, p. 1584.

(*d*) The amount will be agreed between the officer procuring the sample and the analyst. See the Sale of Food and Drugs Act, 1875, s. 12, *ante*, p. 1583.

power on the part of the local authority to cause proceedings to be taken as if the local authority had caused the analysis to be made (*e*).

Power for Local Government Board or Board of Agriculture to act in default of local authority.

3.—(1) It shall be the duty (*f*) of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst (*g*), and put in force from time to time, as occasion may arise, the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis.

(2) If the Local Government Board or Board of Agriculture, after communication with a local authority, are of opinion that the local authority have failed to execute or enforce any of the provisions of the Sale of Food and Drugs Acts in relation to any article of food, and that their failure affects the general interest of the consumer or the general interests of agriculture in the United Kingdom, as the case may be, the Board concerned may, by order, empower an officer of the Board to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3) The expenses incurred by the Board or their officer under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts (*h*), and shall be paid by the local authority to the Board on demand, and in default the Board may recover (*i*) the amount of the expenses with costs from the local authority.

(4) For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board (*k*).

Power for Board of Agriculture to make regulations as

4.—(1) The Board of Agriculture may, after such inquiry as they deem necessary, make regulations (*l*) for determining what deficiency in any of the

(*e*) See the Sale of Food and Drugs Act, 1875, s. 20, *ante*, p. 1588. Presumably on such proceedings the certificate will be evidence, and all other provisions of the Act of 1875, *e.g.*, as to defences, costs, appeal, etc., will apply. See also ss. 19—22 of this Act, *post*. Proceedings may be taken by a duly appointed inspector without special authorisation of the local authority (*Connor* v. *Butler*, [1902] 2 I. R. 669). See 67 J. P. 26.

(*f*) This duty will be enforceable by *mandamus*, notwithstanding the powers of the L. G. B. or Board of Agriculture and Fisheries under the next sub-section (*R.* v. *Leicester Guardians*, [1899] 2 Q. B. 632; 63 J. P. 474).

(*g*) See the Sale of Food and Drugs Act, 1875, s. 10, *ante*, p. 1583, and notes thereto.

(*h*) See the Sale of Food and Drugs Act, 1875, s. 29, *ante*, p. 1593, and notes thereto.

(*i*) By action in any court of competent jurisdiction.

(*k*) Regulations have been issued under this sub-section, by General Order dated March 7th, 1900, which, together with an accompanying Circular, will be found in Appendix II., *post*, p. 2491.

(*l*) The following regulations made under this section were published in the London Gazette, August 6th, 1901:

The Board of Agriculture, in exercise of the powers conferred on them by s. 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following regulations:—

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed milk) contains less than 3 per cent. of milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

to analysis of milk, cream, butter, or cheese.

normal constituents of genuine milk (*m*), cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk

3. (Repealed as to England and Wales: see regulations of 1912, *infra*).
4. These regulations shall extend to Great Britain.
5. These regulations shall come into operation on the 1st of September, 1901.
6. These regulations may be cited as the Sale of Milk Regulations, 1901.

The following further regulations made under this section were published in the London Gazette, April 22nd, 1902:

The Board of Agriculture in exercise of the powers conferred on them by s. 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following regulations :—

1. Where the proportion of water in a sample of butter exceeds 16 per cent. it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein.
2. These regulations extend to Great Britain.
3. These regulations shall come into operation on the fifteenth day of May, one thousand nine hundred and two.
4. These regulations may be cited as the Sale of Butter Regulations, 1902.

The following regulations were made by the Board of Agriculture on June 29th, 1912:

The Board of Agriculture and Fisheries, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

1. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 8·7 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, until the contrary is proved, that the milk is not genuine, by reason of either the addition thereto of water, or the abstraction therefrom of milk-solids other than milk-fat.
2. Regulation 3 of the Sale of Milk Regulations, 1901, is hereby revoked, but not so as to affect the validity of any certificate of analysis given before the commencement of these regulations or any legal proceedings in respect of any sample to which any such certificate relates.
3. These regulations shall come into operation on the first day of September, one thousand nine hundred and twelve.
4. These regulations shall extend to England and Wales.
5. These regulations may be cited as the Sale of Milk Regulations, 1912.

The following cases have been decided in relation to these regulations: A farmer was charged with selling milk which on analysis proved to be below the standard of quality required by the regulations. The accused, his mother and servants gave evidence which was believed, but was uncorroborated by neutral testimony, to the effect that the milk had not been tampered with. The accused was convicted and it was held, on appeal, that the evidence adduced by him was sufficient without further corroboration to overcome the presumption that the milk had been tampered with, and that the conviction must be quashed (*Lamont* v. *Rodger*, [1911] S. C. (J.) 24). A farmer, charged with selling skimmed milk which was not genuine, inasmuch as it did not contain 9 per cent. of milk-solids as required by s. 3 of the Regulations (1901), objected to the relevancy of the complaint on the ground that the analyst's certificate produced was unintelligible, that it did not state the "milk"-solids, and did not show that any offence had been committed. The certificate stated as follows :—"Solids not fat: 7·35; Fat: 1·31; Water: 91·34; Ash: ·59." It was held that the certificate was quite clear; that the omission of the word "milk" was of no moment; and that the additional information as to "ash" did not affect the analysis, which showed a deficiency of solids (*Gordon* v. *Love*, [1911] S. C. (J.) 75). A farmer was charged with selling milk which was not genuine, in that it did not contain the quantity of milk fat and solids required by the Regulations (1901). It was proved to the satisfaction of the sheriff-substitute that the milk had not been tampered with after having been taken from the cow, but that the deficiency in quality was due to a method of feeding purposely adopted by the farmer in order to produce quantity of milk rather than quality. The accused was acquitted, and it was held that the decision of the sheriff-substitute was right (*Scott* v. *Jack*, [1912] S. C. (J.) 87). The respondent was charged with having consigned to a purchaser milk which was not of the nature, substance or quality contracted to be sold, the milk being deficient in fat to the extent of 26 per cent. of the minimum amount fixed by the Regulations (1901). At the hearing the facts stated in the information were proved or admitted, and evidence was also given and admitted that another consignment of the same morning's milk from the same cows showed on analysis 3·1 per cent. fat (being in excess of the said minimum) and that the morning's milk from the same cows seven days later showed on analysis a deficiency in

(*m*) For note (*m*) see p. 1969.

(including condensed milk), cream, butter, or cheese, shall for the purposes of the Sale of Food and Drugs Acts raise a presumption, until the contrary is proved, that the milk, cream, butter, or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis under those Acts (*n*).

(2) Any regulations made under this section shall be notified in the London and Edinburgh Gazettes, and shall also be made known in such other manner as the Board of Agriculture may direct.

Extension of Margarine Act, 1887, to margarine-cheese. 50 & 51 Vict. c. 29.

5. The provisions of the Margarine Act, 1887 (*o*), as amended by this Act, shall extend to margarine-cheese, and shall apply accordingly, with the substitution of "margarine-cheese" and "cheese" for "margarine" and "butter," and provided that all margarine-cheese sold or dealt in otherwise than by retail shall either be inclosed in packages marked in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words "margarine-cheese."

Marking of margarine and margarine-cheese.

6.—(1) Where under this Act (*p*) or the Margarine Act, 1887 (*q*), it is required that any package containing margarine or margarine-cheese shall be branded or marked, the brand or mark shall be on the package itself and not solely on a label, ticket, or other thing attached thereto.

(2) The letters required to be printed on the paper wrapper in which margarine or margarine-cheese is sold shall be capital block letters not less

fat below such minimum of 3 per cent. only. The justices held that although the sample was not of the nature, substance and quality contracted to be sold, yet the respondent had not tampered with the milk, which was as it came from the cows. The Divisional Court remitted the case to the justices to convict the respondent unless further evidence was given before them bearing upon the question whether or not the difference between the quantities of fat in the two consignments on the day in question was consistent with there having been ordinary milking (*Marshall* v. *Skett* (1913), 77 J. P. 173; 108 L. T. 1001).

The power of making regulations under the above section has been extended by s. 6 of the Butter and Margarine Act, 1907, *post*, p. 2075.

For regulations made under the P. H. Acts as to the case of preservatives in milk and cream, see p. 1095, *ante*.

(*m*) "Milk" includes skimmed milk, and "genuine" means merely "unadulterated." Accordingly regulations as to skimmed milk made under this section are not *ultra vires* (*Gordon* v. *Love*, [1911] S. C. (J.) 75).

(*n*) As to certificates, see the Sale of Food and Drugs Act, 1875, s. 18, *ante*, p. 1586, and notes thereto.

The Board of Agriculture issued a circular dated 17th August, 1903, on the analysis of sour milk in relation to the composition of milk when fresh, which will be found printed in 1 L. G. R., Part III., p. 393.

It is desirable that an analyst's certificate should state in terms the standard with reference to the amount of milk-fat in genuine milk, on which the analyst bases his conclusion, but failure to state it does not vitiate the certificate if a simple calculation from the figures given in the certificate makes it apparent that the analyst has proceeded upon the standard laid down by the Sale of Milk Regulations, 1901 (*Bayley* v. *Cook* (1905), 69 J.P. 139; 92 L. T. 170).

A certificate of the analysis of an article sold as butter is invalid if the analyst does not report whether any change has taken place in the constitution of the article; and it is no excuse for non-compliance with the direction to that effect in the prescribed form of certificate that the article proved on analysis to be margarine (*Hunter* v. *Wintrup* (1906), 7 F. (J. C.) 22).

(*o*) *Ante*, p. 1800.

(*p*) Under s. 1, *ante*, p. 1965.

(*q*) See the Margarine Act, 1887, s. 6, *ante*, p. 1801, and notes thereto. The presen section is not repealed by s. 8 of the Butter and Margarine Act, 1907, which permits margarine to be described "in" a wrapper by a name combining the word margarine with a fancy or descriptive word approved by the Board of Agriculture and Fisheries *Williams* v. *Friend*, [1912] 2 K. B. 471; 76 J. P. 301; *Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139).

than half an inch long and distinctly legible, and no other printed matter shall appear on the wrapper (*r*).

(3) *The words "or with" in section six of the Margarine Act*, 1887, *shall be repealed* (*s*).

Provisions as to manufacturers of and dealers in margarine and margarine-cheese.

7.—(1) Every occupier of a manufactory (*t*) of margarine or margarine-cheese, and every wholesale dealer in such substances, shall keep a register showing the quantity and destination of each consignment of such substances (*u*) sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Board of Agriculture (*v*).

*   *   *   *   *

(3) If any such occupier or dealer—

(a) fails to keep such a register, or

(b) refuses to produce the register when required to do so by an officer of the Board of Agriculture (*x*), or

(c) fails to keep the register posted up to date, or

(d) wilfully makes any entry in the register which is false in any particular, or

(e) fraudulently omits to enter any particular which ought to be entered in the register,

he shall be liable on summary conviction for the first offence to a fine not exceeding ten pounds, and for any subsequent offence to a fine not exceeding fifty pounds.

50 & 51 Vict. c. 29.

(4) The provisions of section nine of the Margarine Act, 1887 (*y*), relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

(5) The registration of a manufactory or other premises shall be forthwith notified by the local authority to the Board of Agriculture.

Restriction amount of butter fat in margarine

8. It shall be unlawful to manufacture, sell, expose for sale, or import any margarine, the fat of which contains more than ten per cent. of butter fat, and every person who manufactures, sells, exposes for sale, or imports any margarine which contains more than that percentage, shall be guilty of an offence under the Margarine Act, 1887 (*z*), and any defence which would be a defence

(*r*) The express prohibition of other printed matter alters the effect of the decisions under the Margarine Act, 1887, in *Fyfe* v. *M'Laughlin* (1894), Adam, Just. Rep. 74; and *World's Tea Co.* v. *Gardiner*, [1895] 59 J. P. 358.

(*s*) Repealed by S. L. R. A., 1908.

(*t*) As to registration of the manufactory itself, see the Margarine Act, 1887, s. 9, *ante*, p. 1803, and notes thereto. See also sub-s. (5) of this section.

By s. 1 (1) of the Butter and Margarine Act, 1907, *post*, p. 2072, the provisions of s. 9 of the Margarine Act, 1887, *ante*, p. 1803, as amended by this section, have been extended to butter factories and places where milk-blended butter is manufactured or dealt in wholesale.

(*u*) By s. 1 (2) of the Butter and Margarine Act, 1907, the provisions of this section are with the necessary adaptations applied to consignments of milk-blended butter.

(*v*) Sub-s. (2) relating to power of entry into any manufactory of margarine or margarine-cheese and of taking samples for analysis is repealed, and under s. 2 of the Butter and Margarine Act, 1907, *post*, p. 2073, extended powers are given applicable to any premises registered under the Sale of Food and Drugs Acts or that Act.

(*x*) The inspector may make notes of the register when produced (*Hart* v. *Cohen*, (1893) 4 F. (J. C.) 445).

(*y*) *Ante*, p. 1803.

(*z*) See the Margarine Act, 1887, ss. 4 and 5, *ante*, p. 1801, and notes thereto. Butter blended with milk so that it contains an excess of water does not become margarine. Therefore a vendor of such milk-blended butter cannot be convicted under this section for selling margarine containing more than ten per cent. of butter fat. The sale of butter blended with milk is lawful if sold as such (*Bayley* v. *Pearks, Gunston and Tee, Ltd.* (1901), 66 J. P. 790; 87 L. T. 67). But see now the Butter and Margarine Act, 1907, *post*, p. 2072.

under section seven of that Act (*a*), shall be a defence under this section, and the provisions of the former section shall apply accordingly.

[*Saving for existing contracts.*] (*b*)

9. Every person who, himself or by his servant, in any highway or place of public resort sells (*c*) milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle his name and address, and in default shall be liable on summary conviction to a fine not exceeding two pounds. Provision as to name and address of person selling milk or cream in a public place.

10. In the case of a sample taken of milk in course of delivery (*d*), or of margarine or margarine-cheese forwarded by a public conveyance (*e*), the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up, to the consignor if his name and address appear on the can or package containing the article sampled (*f*). Division of samples taken in course of delivery or transit.

11. Every tin or other receptacle containing condensed separated or skimmed milk must bear a label clearly visible to the purchaser on which the words "Machine-skimmed Milk," or "Skimmed Milk," (*g*), as the case may require, are printed in large and legible type (*h*), and if any person sells or exposes or offers for sale condensed separated or skimmed milk in contravention of this section he shall be liable on summary conviction to a fine not exceeding ten pounds. Provisions as to condensed separated or skimmed milk.

12. The label referred to in section eight of the Sale of Food and Drugs Act, 1875 (*i*), shall not be deemed to be distinctly and legibly written or printed within the meaning of that section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label: Provided that nothing in this enactment shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years before the commencement of this Act; but the Comptroller-General of Patents, Designs, and Trade Marks shall not register any trade mark purporting to describe a mixture unless it complies with the requirements of this enactment. Notice of mixtures. 38 & 39 Vict. c. 63.

(*a*) *Ante*, p. 1802.

(*b*) See note (*s*), *ante*, p. 1970.

(*c*) It would seem that this does not apply to mere delivery of milk from a cart or van in the public street at the houses of regular customers in pursuance of orders received at a central dairy or shop, or given at the customer's house to the man with the cart when he calls. The section seems aimed rather at itinerant vendors who have no fixed place of business, but only a cart or van from which they sell to all-comers in the street. The sale must take place in the highway or place of public resort in order to constitute an offence. *Cf.* the Sale of Food and Drugs Act Amendment Act, 1879, s. 5, *ante*, p. 1693, amending the Sale of Food and Drugs Act, 1875, s. 17, *ante*, p. 1586, as to refusing to sell samples of food for analysis.

This section requires the person selling the milk to have his name and address upon the cart if the milk is sold from the cart or upon the can if it is sold from the can; and it is not sufficient that it should be upon the one if the milk is sold from the other (*Crabtree* v. *Skelton* (1901), 70 L. J. K. B. 560).

(*d*) See the Sale of Food and Drugs Act Amendment Act, 1879, s. 3, *ante*, p. 1692.

(*e*) See the Margarine Act, 1887, s. 8, *ante*, p. 1803.

(*f*) This section meets the difficulty disclosed by *Rouch* v. *Hall* (1880), 6 Q. B. D. 17; 45 J. P. 220, and enables the consignor of the milk or margarine to protect himself by obtaining an analysis on his own account, which he can make use of under s. 22, *post*, for his defence

(*g*) This section does not apply to milk carried round for sale in an ordinary can, but only to condensed milk (*French* v. *Card* (1909), 73 J. P. 389; 101 L. T. 428).

(*h*) It is not provided that the label shall contain no other matter which might obscure the statutory words. *Cf.* the Sale of Food and Drugs Act, 1875, s. 8, *ante*, p. 1581, as amended by s. 12 of this Act.

(*i*) *Ante*, p. 1581.

Amendment of 38 & 39 Vict. c. 63, as to samples.

13. *In section fourteen of the Sale of Food and Drugs Act,* 1875 (*k*), *the words "offer to" and the words "proceed accordingly and shall" shall be repealed.*

Taking samples in course of delivery. 42 & 43 Vict. c. 30.

14. The provisions of section three and section four of the Sale of Food and Drugs Act Amendment Act, 1879 (relating to the taking of samples of milk in course of delivery) (*l*), shall apply to every other article of food (*m*): Provided that no samples shall be taken under this section except upon the request or with the consent of the purchaser or consignee.

Amendment of 38 & 39 Vict. c. 63, as to registered parcels.

15. In section sixteen of the Sale of Food and Drugs Act, 1875 (*n*), the words "registered parcel" shall be substituted for the words "registered letter."

Obstruction of officer in discharge of his duties.

16. Any person who wilfully obstructs or impedes (*o*) any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents or attempts to prevent, the due execution by such inspector or officer (*p*) of his duty under those Acts, shall be liable, on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

Penalties for offences under the Sale of Food and Drugs Acts.

17.—(1) Where, under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine which may extend to twenty pounds as a maximum (*q*), he shall be liable for a second offence under the same provision to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

(2) Where, under any provision of the Sale of Food and Drugs Acts, a person guilty of an offence is liable to a fine exceeding fifty pounds, and the offence, in the opinion of the court, was committed by the personal act, default, or culpable negligence of the person accused, that person shall be liable (if the court is of opinion that a fine will not meet the circumstances of the case) to imprisonment, with or without hard labour, for a period not exceeding three months (*r*).

Articles sold in tins or packets. 38 & 39 Vict. c. 63.

18. Notwithstanding anything in section seventeen of the Sale of Food and Drugs Act, 1875 (*s*), where any article of food or drug is exposed for sale in an

(*k*) *Ante*, p. 1584. The effect of these repeals is to render division of samples compulsory in all cases except in cases within the Sale of Food and Drugs Act Amendment Act, 1879, s. 3. And even in those cases a division may be necessary under s. 10, *supra*. Section 13 is now repealed by the S. L. R. A., 1908.

(*l*) *Ante*, p. 1692.

(*m*) See definition of "food" in s. 26, *post*.

(*n*) *Ante*, p. 1585. This alteration had been already made since 1891 by the Post Office Act, 1891, s. 11, now repealed by s. 27, *post*.

(*o*) This enactment meets the difficulty in *Hewson* v. *Gamble* (1892), 56 J. P. 101. See the facts of this case set out, *ante*, p. 1586, and compare *Soutar* v. *Kerr*, cited in the same note. Obstruction may be wilful obstruction, although it involves no actual violence. See *Borrow* v. *Howland* (1896), 60 J. P. 391; 74 L. T. 787. But personal *mens rea* is a necessary ingredient of the offence. Thus, when a manager deliberately, but without the authority of the defendant, broke a bottle while pretending to uncork it, it was held that the defendant could not be convicted of wilful obstruction (*Taylor* v. *Nixon*, [1910] 2 I. R. 94).

(*p*) If the officer corruptly solicit or receive or agree to receive the bribe he may himself be also punishable under the Public Bodies Corrupt Practices Act, 1889, *ante*, p. 790. See also the Prevention of Corruption Act, 1906.

(*q*) See the Sale of Food and Drugs Act, 1875, ss. 6, 7, 9, 27, *ante*, pp. 1578—1582, 1592.

(*r*) Imprisonment may also be inflicted under the Sale of Food and Drugs Act, 1875, ss. 3 and 4, *ante*, p. 1577, and under s. 11 (1) of the Butter and Margarine Act, 1907, *post*, p. 2076.

(*s*) *Ante*, p. 1586. The object of this section is to protect retailers against a plan said to have been sometimes adopted in order to trip them on a sale of a mixed article. The officer purchasing would ask for a portion only of the contents of the manufacturer's

unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained.

19.—(1) When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything contained in section twenty of the Sale of Food and Drugs Act, 1875 (*t*), shall not be instituted after the expiration of twenty-eight days from the time of the purchase (*u*).

Time for proceeding and regulation as to summons.

(2) In any prosecution under the Sale of Food and Drugs Acts the summons shall state (*x*) particulars of the offence or offences alleged, and also the name of the prosecutor, and shall not be made returnable in less time than fourteen (*y*) days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor (*z*).

labelled tin or packet because he was aware that the label probably contained sufficient notice of admixture. On being served, if through inadvertence on the part of the tradesman, the officer's attention was not drawn to the label, and no verbal declaration was made, the officer was at once put into a position to prosecute, and instituted proceedings accordingly.

(*t*) *Ante*, p. 1588. Under that section there was only the limit by reference to the S. J. A., 1848, s. 11, but the Sale of Food and Drugs Act Amendment Act, 1879, s. 10, introduced a special provision which is now repealed, s. 27 of this Act.

(*u*) This was the limit introduced by the Sale of Food and Drugs Act Amendment Act, 1879, s. 10, with regard to a purchase of a perishable article for test purposes; now it applies whether the article be perishable or not. The limit, it will be observed, applies only where the purchase was for test purposes, not for consumption or for re-sale. Under the repealed enactment of the Act of 1879, s. 10, it was held that a summons under s. 27 of the Act of 1875 against the original vendor of a perishable article of food for giving a false warranty in writing in respect of it to the purchaser, who purchased it for retailing, need not be served within twenty-eight days from the purchase of the food for test purposes from that purchaser (*Cook* v. *White*, [1896] 1 Q. B. 284; 60 J. P. 330).

In cases where it applies, this provision as to time cannot be disregarded, and is of the essence of the jurisdiction to try the offence, so that the appearance of the defendant to the summons does not waive the objection, even though he does not take the point (*Dixon* v. *Wells* (1890), 25 Q. B. D. 249; 54 J. P. 725).

When samples have been taken by inspectors under s. 2 of the Butter and Margarine Act, 1907, the time limit fixed by this section does not apply (*Monro* v. *Central Creamery Co., Ltd.*, [1912] 1 K. B. 578; 76 J. P. 131).

The prosecution is instituted when the information is laid, not when the summons is served (*Beardsley* v. *Giddings*, [1904] 1 K. B. 847; 68 J. P. 222; *Brooks* v. *Bagshaw*, [1904] 2 K. B. 798; 68 J. P. 514).

(*x*) The common form of summons under the S. J. A. usually states the name of the prosecutor laying the information upon which it is issued. (See S. J. Rules, 1886, Schedule of Consolidated Forms, Form No. 2.) It also states shortly the matter of the information, that is, the description of the offence charged, but no objection may, in general, be taken to any summons for any alleged defect therein in substance or in form, see the S. J. A., 1848, s. 1. The express provisions of the present section are not intended to overrule that general enactment. It is founded on the repealed s. 10 of the Sale of Food and Drugs Act Amendment Act, 1879, which was passed at a time when the common form of summons under the S. J. A., 1848, Sched. A., did not state the name of the prosecutor. It is for the justices to decide whether the summons sufficiently states the particulars of the offence and they cannot be required to state a case on it (*R.* v. *Wakefield* (1890), 54 J. P. 148). The omission of the necessary particulars does not deprive the justices of jurisdiction, (*Grimble & Co.* v. *Preston*, [1914] 1 K. B. 270), but merely entitles the defendant to an adjournment of the hearing in the event of the justices being satisfied that he is prejudiced by the omission (*Neal* v. *Devenish*, [1894] 1 Q. B. 544; 58 J. P. 246, disapproving *Barnes* v. *Rider* (1893), 62 L. J. M. C. 25; 57 J. P. 473). Such an omission is an informality which may be waived by the party charged (*Grimble & Co.* v. *Preston*, *supra*).

(*y*) Substituted for seven days under the repealed Sale of Food and Drugs Act Amendment Act, 1879, s. 10. Fourteen clear days must elapse between the date of the summons and the date of the return, excluding both those dates from the computation (*McQueen* v. *Jackson*, [1903] 2 K. B. 163; 67 J. P. 353).

(*z*) This is a new requirement (*Batt* v. *Mattinson* (1900), 64 J. P. 615); 82 L. T. 800.

Provisions as to use of warranty or invoice as defence, and proceedings against the warrantor.

20.—(1) A warranty or invoice shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts (*a*) unless the defendant has, within seven days after service of summons, sent (*b*) to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person (*c*).

(2) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(3) A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice.

38 & 39 Vict. c. 67.
50 & 51 Vict. 29.

(4) Where the defendant is a servant of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on section twenty-five of the Sale of Food and Drugs Act, 1875, and section seven of the Margarine Act, 1887, in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor (*d*).

(5) Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of section twenty-five of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts for giving the warranty relied on by the defendant in such prosecution, may be taken as well before

It does not go to the jurisdiction of the justices, and it can be waived by the defendant's advocate cross-examining the witnesses for the prosecution. It is then too late for him to take the objection when he is called upon to open his own case (*Grimble & Co., Ltd.* v. *Preston*, *ante*, p. 1973. As to the certificate, see the Sale of Food and Drugs Act, 1875, ss. 14, 18, 21, *ante*, pp. 1584—1588. The analyst's certificate must be obtained by every prosecutor whether private or official. It is not sufficient to make use of a certificate obtained in other proceedings even though they arose out of the same transaction (*R.* (*Barry*) v. *Mahoney*, [1909] 2 I. R. 490).

A copy of any certificate obtained by the defendant must be served on the prosecutor three days before the return day under s. 22 (2), *post.*

Two conflicting certificates in due form will not neutralise each other—the court may choose between them. And if the defendant produces no certificate, yet he may offer evidence to contradict the prosecutor's certificate (*Hewitt* v. *Taylor*, [1896] 1 Q. B. 287; 60 J. P. 311). But if the defendant produce no certificate and offer no evidence to contradict the prosecutor's certificate, the justices may act on that and convict—see note (*l*), p. 1588, *ante.*

(*a*) See the Sale of Food and Drugs Act, 1875, s. 25, *ante*, p. 1589, and notes thereto. A warranty is no defence for proceedings under s. 2 of this Act. See *Kelly* v. *Lonsdale*, *ante*, p. 1965.

(*b*) It is sufficient if it is posted within the required time even if it does not reach the purchaser until after the seven days have elapsed (*Retail Dairy Co., Ltd.* v. *Clarke*, [1912] 2 K. B. 388; 76 J. P. 282).

(*c*) The section means that if the defendant intents to rely on a warranty he must send a copy of the warranty, but if he intends to rely on an invoice, he must send a copy of the invoice. In either case there must be a copy of that which entitled the defendant to believe the article was the same in nature, substance, and quality as the article demanded by the purchaser (*Farthing* v. *Parkinson* (1905), 68 J. P. 353; 90 L. T. 783).

The words "within seven days" apply solely to the sending of the written notice to the purchaser, and not to the sending of the notice to the warrantor (*Marcus* v. *Crook*, [1916] W. N. 236).

(*d*) This sub-section overrules the decision in *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 57 J. P. 775, so far as it decided that a servant could not avail himself of the warranty defence. The word "otherwise" in this sub-section means "other in nature, substance and quality."

a court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given (*e*).

(6) Every person (*f*) who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be liable on summary conviction, for the first offence, to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true (*g*).

21. The justices or court referred to in section twenty-two of the Sale of Food and Drugs Act, 1875 (*h*), shall on the request of either party under that section cause an article of food or drug to be sent to the Commissioners of Inland Revenue for analysis, and may, if they think fit, do so without any such request.

Duty of court to send article for analysis. 38 & 39 Vict. c. 63.

22.—(1) At the hearing of the information in any proceeding under the Sale of Food and Drugs Acts, the production by the defendant of a certificate of analysis by a public analyst in the form prescribed in section eighteen of the Sale of Food and Drugs Act, 1875 (*i*), shall be sufficient evidence of the

Provisions as to certificates of analysis.

(*e*) It had been held that where neither the sale, nor the delivery was made, nor the warranty was given, nor any sample taken in course of delivery, within the jurisdiction of the court before which an information for false warranty was preferred, that court had of no jurisdiction (*R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372). The present sub-section settles the question of jurisdiction. In cases where the sale and delivery take place and the warranty is given outside the jurisdiction of the court proceedings for false warranty cannot be taken unless the person to whom the warranty was given is the person from whom the article in question was purchased for analysis (*Manners* v. *Tyler*, [1902] 1 K. B. 901; 66 J. P. 866).

(*f*) This includes a joint stock company (*Chuter* v. *Freeth and Pocock, Ltd.*, [1911] 2 K. B. 832; 75 J. P. 430). And see a similar case decided under the P. H. (London) A., 1891, s. 47; *R.* v. *Ascanio Puck & Co. and Paice* (1912), 76 J. P. 487; 29 T. L. R. 11.

(*g*) This sub-section remodels the previous law as to false warranty, and accordingly that part of the Sale of Food and Drugs Act, 1875, s. 29, which related to that offence is repealed by s. 27, *post*. It will be seen that the *onus* is on the defendant to prove that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true. If he proves that, he is entitled to be acquitted (*Oatley* v. *Lemon* (1905), 69 J. P. 163; 92 L. T. 200). Formerly he was entitled to be acquitted if he did not at that time know and had no reason to believe they were false (*Derbyshire* v. *Houliston*, [1897] 1 Q. B. 772; 61 J. P. 374). The issue which the justices have to determine is not whether the defendants "took steps to see that the milk was all right, but whether they had reason to believe that it was all right"—per Lord ALVERSTONE, C.J., in *Dairy Supply Co., Ltd.* v. *Houghton* (1912), 76 J. P., at p. 45; 106 L. T. 220.

As to punishment by imprisonment in certain cases, see s. 17 (2), *ante*.

Proceedings for false warranty must be commenced within six months from the date when the warranty was given, not from the date when it was first discovered to be false (*Whitaker* v. *Pomfret*, [1902] 1 K. B. 661; 66 J. P. 408). But when a warranty is given in regard to a contract to supply milk for an indefinite future period, and some time thereafter milk is supplied which is not in accordance with the warranty, the time runs from the date of the particular consignment and not from that on which the warranty was given (*Thomas, Ltd.* v. *Houghton*, [1911] 2 K. B. 959; 75 J. P. 523).

The appellants gave a warranty that vinegar sold by them was "pure malt vinegar," and they were summoned by the respondent for giving a false warranty. The analysis obtained by the respondent showed that 30 per cent. of it was not derived from malted barley or cereals and contained only ·024 per cent. of phosphoric acid. The analysis obtained from Somerset House showed that a third of it consisted of vinegar not derived from malt. Evidence was given that vinegar containing less than ·05 per cent. of phosphoric acid was not malt vinegar, but must have been made from something other than malt or cereals. The justices found that the warranty was false and the Divisional Court upheld their decision (*Grimble & Co., Ltd.* v. *Preston*, *ante*, p. 1973).

(*h*) *Ante*, p. 1589.

(*i*) *Ante*, p. 1586.

facts therein stated, unless the prosecutor requires that the analyst be called as a witness (*k*).

(2) A copy of every such certificate shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper (*l*).

23. [*Transfer of powers from Secretary for Scotland to Local Government Board.*]

24. [*Application to Ireland.*]

Interpretation of terms.

25. In this Act, unless the context otherwise requires—

The expression "margarine-cheese" means any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk :

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk :

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, and the expression "public analyst" means an analyst so appointed (*m*) :

Other expressions have the same meaning as in the Sale of Food and Drugs Acts, and an offence under this Act shall be treated as an offence under those Acts (*n*) :

Definition of "food."

26. For the purposes of the Sale of Food and Drugs Acts the expression "food" shall include every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food ; and shall also include flavouring matters and condiments (*o*).

27. [*Repeal of enactments in Schedule.*] (*p*)

Short title and commencement. 38 & 39 Vict. c. 36. 42 & 43 Vict. c. 30. 50 & 51 Vict. c. 29.

28.—(1) This Act may be cited as the Sale of Food and Drugs Act, 1899, and the Sale of Food and Drugs Act, 1875, and the Sale of Food and Drugs Act Amendment Act, 1879, and the Margarine Act, 1887, and this Act may be cited collectively as the Sale of Food and Drugs Acts, 1875 to 1899, and are in this Act referred to as the Sale of Food and Drugs Acts.

(2) [*Commencement of Act, January 1st,* 1900.] (*p*)

(*k*) As to the effect of this, see notes to the Sale of Food and Drugs Act, 1875, s. 21, *ante*, p. 1588.

(*l*) A copy of any analyst's certificate obtained on behalf of the prosecutor must be served with the summons, under s. 19 (1), *ante*, so that the Act in effect provides for an exchange of certificates.

(*m*) See the Sale of Food and Drugs Act, 1875, s. 10, *ante*, p. 1583, and the L. G. A., 1888, ss. 3 (x.), 38, 39.

(*n*) This clause, however, does not import the definition of margarine from s. 3 of the Margarine Act, 1887, so as to render it unlawful to sell milk-blended butter otherwise than under the name of margarine (*Bayley* v. *Pearks, Gunston & Tee, Ltd.*, *ante*, p. 1970).

(*o*) By the Sale of Food and Drugs Act, 1875, s. 2, the term "food" was defined merely to include every article used for food or drink by man other than drugs or water, and it was held that baking powder was not food (*Warren* v. *Phillips* (1881), 44 J. P. 61 ; *James* v. *Jones*, [1894] 1 Q. B. 304 ; 58 J. P. 230). The present sub-section appears to overrule those decisions. It was also held that chewing gum is not food (*Shortt* v. *Smith* (1895), 59 J. P. 213 ; 11 T. L. R. 326 ; *Bennett v. Tyler* (1900), 64 J. P. 119 ; 81 L. T. 787), and it seems that these decisions still hold good. The principle seems to be that food must in every case be a substance, eaten or drunk so as to be received into the stomach and capable thereby of affording nourishment to some extent.

(*p*) Repealed by S. L. R. A., 1908.

SCHEDULE (*q*).

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
38 & 39 *Vict. c.* 63 .	*The Sale of Food and Drugs Act*, 1875.	*In section two, the definition of the term "food."* *In section fourteen, the words "offer to," and the words "proceed accordingly and shall."* *Section fifteen.* *In section twenty-seven, the words from "Every person who shall give a false warranty in writing," to a "penalty not exceeding twenty pounds."*
42 & 43 *Vict. c.* 30 .	*The Sale of Food and Drugs Act Amendment Act*, 1879.	*Section ten.*
50 & 51 *Vict. c.* 29 .	*The Margarine Act*, 1887.	*In section six, the words "or with," and the words "not less than a quarter of an inch square."*
54 & 55 *Vict. c.* 46 .	*The Post Office Act*, 1891.	*Section eleven.*

THE BURIAL ACT, 1900.

(63 & 64 VICT. c. 15.) (*r*)

An Act to amend the Law relating to Burial Grounds. [10th July 1900.]

1.—(1) The burial authority for any burial ground (*s*) may, if they think fit, apply to the bishop to consecrate any portion of the burial ground approved in that behalf by the Secretary of State. Consecration.

(2) If the burial authority do not make the application within a reasonable time after a request in that behalf, and the Secretary of State is satisfied that a reasonable number of the persons for whom, or within the area for which, the burial ground is provided desire that a portion of it be consecrated, and that the consecration fees have been paid or reasonably secured, the Secretary of State may make the application in respect of an approved portion of the burial ground, and the bishop may consecrate accordingly, and it shall be the duty of the burial authority to make such arrangements as may be necessary for the consecration (*t*).

(*q*) Repealed by S. L. R. A., 1908.

(*r*) This being one of the Burial Acts, it is strictly outside the scope of the present work, except so far as it affects the powers and duties of urban and rural councils who provide and maintain cemeteries under the powers of the Public Health (Interments) Act, 1879.

(*s*) The expression "burial authority" is defined by s. 11, *post*. It includes a local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, *ante*, p. 709.

For a form of petition, see Enc. of Forms and Precedents, vol. 3, p. 125, Form No. 24.

(*t*) The local authority had previously a discretion as to whether they should apply for consecration. See the Cemeteries Clauses Act, 1847, s. 23, *ante*, p. 1444. The

Chapels.

2.—(1) A burial authority may at their own cost erect on any part of their burial ground, which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act shall not be consecrated or reserved for the exclusive use of any denomination.

(2) A burial authority may at the request and cost of the residents within their district belonging to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use.

(3) Where such a request is made and the estimated costs are tendered to the burial authority or reasonably secured, then, if the burial authority refuse to grant the request or fail to give effect to it within a reasonable time, a Secretary of State may, if he thinks fit, by order in writing, require the burial authority to erect, furnish, and maintain, or to give facilities for erecting, furnishing, and maintaining, such a chapel in accordance with directions given in the order, and the burial authority shall comply with the order.

(4) Subject to the provisions of this section the obligation of a burial authority to build a chapel within the consecrated part of a burial ground provided under the Public Health (Interments) Act, 1879, shall cease (*u*).

42 & 43 Vict. c. 31.

Fees.

3.—(1) Every burial authority shall submit to the Secretary of State a table of fees to be received by them in respect of services rendered by any minister of religion or sexton, and the Secretary of State may approve the table with or without modifications. Provided that such fees shall be of the same amount in respect of burial service in the consecrated and the unconsecrated parts of a burial ground (*v*).

(2) If the burial authority fail to submit such a table on being requested to do so by the Secretary of State, he may make a table of fees.

(3) The fees fixed by the table shall be payable to and collected by the burial authority, together with the other fees payable to them, and shall be paid by the burial authority to the minister or sexton in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State (*x*).

(4) Subject to the provisions of this section, no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument, or any other matter whatsoever, in any burial ground maintained by a burial authority, except for services rendered by him (*y*), and this enactment shall apply to any such fee which is by law or

text practically gives an appeal against the refusal of the local authority to make the application.

It seems that the persons who make the request of the Secretary of State under this section must themselves pay or secure the consecration fees. A table of those fees will be found in Mr. Brooke Little's work on the Burial Acts (3rd ed.), p. 739.

(*u*) This section has an important effect on the powers and duties of a local authority who have provided a cemetery under this Act of 1879. They are no longer bound to build a chapel on the consecrated portion of the cemetery as formerly under s. 25 of the Cemetery Clauses Act, 1847, *ante*, p. 1445. And they cannot erect a chapel on the consecrated portion (see sub-s. (1) of this section) except at the cost of residents under sub-s. (2).

(*v*) As to fees in respect of a burial service before, at, or after cremation, see s. 12 of the Cremation Act, 1902, *post*, p. 2025.

(*x*) In a cemetery provided by a local authority under the Public Health (Interments) Act, 1879, it appears that no fees were payable to an incumbent under the Cemeteries Clauses Act, 1847, s. 52. Such fees will now be payable under s. 7, *post*, according to the table fixed as stated in the text.

(*y*) Thus no fees can be due in respect of burials of non-conformists in consecrated ground conducted without any service in respect of burial being rendered by the incumbent (*Williams* v. *Briton Ferry Burial Board*, [1905] 2 K. B. 565: 69 J. P. 313).

custom payable to the churchwardens of any parish or to trustees or other persons for any parochial purpose, or for the discharge of any debt or liability, in like manner as it applies to fees payable to an incumbent.

Provided as follows:

(i.) Where, at the passing of this Act, fees other than for services rendered are payable in respect of any matter arising in any burial ground attached to or used for the purposes of a parish, and laid out and used before the passing of this Act (*z*), the like fees shall continue to be paid during the incumbency of the person who, at the passing of this Act, is the incumbent of the parish, or during a period of fifteen years from the passing of this Act, whichever is longer, or if the fees are not paid to the incumbent, or to any person claiming through or under him, then during the said period of fifteen years, and shall be applicable to the like purposes as heretofore, and the burial authority shall collect and pay these fees in like manner as the fees to be paid for services rendered;

(ii.) The Ecclesiastical Commissioners may at the request and subject to the approval of the incumbent, or other person interested, agree with any burial authority for such payment, periodical or otherwise, as may be thought equitable in commutation of the fees other than those claimed for services rendered, and an agreement so approved shall be binding on the persons for the time being interested, and the burial authority may make accordingly any payment so agreed upon. Where the fees are paid to an incumbent, or to any person claiming through or under him, the Ecclesiastical Commissioners shall apply the commutation money in the first instance to such compensation of the existing incumbent as they may deem equitable, regard being had to all the circumstances of the case; and the residue, if any, for the augmentation of the benefice (*a*).

(5) No fee, other than fees payable to a sexton for services rendered by him, shall be paid to any clerk or other ecclesiastical officer in respect of interments in a burial ground maintained by a burial authority. Provided that any clerk or other ecclesiastical officer who at the passing of this Act is entitled to fees in respect of interments in any such burial ground may apply to the burial authority for compensation for the pecuniary loss caused to him by the foregoing enactment, and the burial authority shall receive and consider the application, and pay to him such sum of money as equitable compensation for his loss and in such manner as may be agreed on, or in default of agreement may be directed by the Secretary of State (*b*).

(*z*) An addition to a burial ground purchased before the passing of this Act, although laid out and adapted for burial purposes, but not consecrated nor actually used until after the passing of the Act, was held not to come within this proviso (*Young* v. *Kingston-on-Thames, etc. Joint Burials Committee*, [1906] 1 K. B. 338; 70 J. P. 107). But where before the passing of the London Government Act, 1899, separate burial grounds had been provided for parishes which after the passing of that Act were united by a scheme made in pursuance of that Act into one parish, it was held that the rector of one of these parishes was not entitled to fees other than for services actually rendered in respect of interments in these burial grounds, after the passing of the Burial Act, 1900, in respect of which he was not before the passing of this Act entitled (*Anderson* v. *Wandsworth Borough Council*, [1908] W. N. 118).

(*a*) These provisions cannot apparently apply in the case of a cemetery provided by a local authority; for, as already stated, no fees were payable to incumbents under the Public Health (Interments) Act, 1879, or, consequently, under s. 52 of the Cemeteries Clauses Act, 1847.

(*b*) A clerk might be appointed in a cemetery under the Cemeteries Clauses Act, 1847, s. 34, *ante*, p. 1446, but he was paid by stipend, not by fees, and the provision in the text does not appear to apply to such a clerk.

(6) For the purposes of this section, a burial authority may borrow in like manner and subject to the like conditions as they may borrow for the provision of a burial ground (*c*).

(7) The provisions of this section, except those as to collection, shall apply to any fixed annual sum substituted for fees in pursuance of section thirty-seven of the Burials Act, 1852 (*d*), in like manner as they apply to fees.

Transfer of powers to Local Government Board.

4. The powers and duties of the Secretary of State under or referred to in the enactments in the First Schedule to this Act shall be transferred to the Local Government Board, and those enactments shall have effect as if any reference therein to a Secretary of State were a reference to the Local Government Board (*e*).

Inquiries by Secretary of State.

5.—(1) The Secretary of State may, if he thinks fit, appoint any person to inquire into any matter relating to the consecration of any part of a burial ground, or the building of any chapel therein, or the fixing, varying, or commutation of or compensation for any fees payable to ministers of religion, ecclesiastical officers, and sextons in connection therewith.

(2) The Secretary of State may make such order as he thinks just as to the payment by the burial authority or other parties of the whole or any part of the costs of the inquiry, including the remuneration and expenses hereinafter mentioned. Any such order may direct payment to be made to the Exchequer or other parties, and may be enforced as if it were an order of the High Court.

(3) The Secretary of State may assign to any person appointed under this section such remuneration not exceeding five guineas a day as he may think fit, and a suitable allowance for expenses, and the remuneration and allowance so assigned shall, except so far as otherwise provided, be paid out of moneys provided by Parliament.

Protection of unconsecrated burial ground.

6. Unconsecrated ground which is maintained by a burial authority and

(*c*) In the case of a local authority the borrowing powers depend on ss. 233, 234 of the P. H. A., 1875, *ante*, pp. 519, 526.

(*d*) This section enables a vestry with the consent of the bishop to substitute a fixed payment for fees payable to the incumbent, clerk, and sexton and other persons and bodies under the Act of 1852.

(*e*) The transfer hereby effected related principally to the following matters :—

The closing of burial grounds and the prohibition of the opening of new ones.

The approval of new burial grounds, and of additions to existing grounds.

The adoption of the Burial Acts and the constitution, powers, and areas of burial authorities.

The inspection and regulation of burial grounds.

Certain provisions as to the borrowing powers and expenses of burial authorities.

Fees other than Ecclesiastical Fees to be taken by burial authorities.

The purchase, sale, and letting of land.

The sanitary regulation of vaults and places of burial.

The grant of licences for interment in closed burial grounds.

The Secretary of State remains the central authority regarding the consecration of burial grounds, the allotment of parts thereof for the use of particular denominations, the building of chapels, and the removal of human remains; and new functions are entrusted to him by this Act, with respect to the fixing, varying, or commutation of, or compensation for, fees payable to ministers of religion, ecclesiastical officers, and sextons.

Speaking generally, all questions relating to sanitation, and to the constitution, powers, and finances of burial authorities, are now matters for the L. G. B., whilst matters affecting the interests of the church and other religious denominations and their officers are referred to the Secretary of State, whether such matters arise in connection with burial grounds under the Burial Acts or with cemeteries under the Public Health (Interments) Act, 1879.

set apart for the purposes of burial shall not be applied to any other purpose except by leave of the Local Government Board (*f*).

7. The incumbent of any ecclesiastical parish situate wholly or partly within the area for which a burial ground is provided under the Public Health (Interments) Act, 1879, shall, with respect to his own parishioners, and persons dying in his parish, be under the same obligation to perform funeral services in that burial ground as he is to perform funeral services in a burial ground provided under the Burial Acts, and the power of the burial authority to appoint a chaplain for a burial ground provided under the Public Health (Interments) Act, 1879, shall cease, and where there is no chaplain for a burial ground so provided, burials in the consecrated part of the ground shall be registered in like manner, and subject to the like provisions as burials in the unconsecrated part (*g*). Obligation of incumbent as to burial. 42 & 43 Vict. c. 31.

8. The notice to be given of intention to bury in a burial ground maintained by a burial authority shall be given at such time and to such person as the burial authority may direct, and so much of section one of the Burial Laws Amendment Act, 1880, as requires forty-eight hours' notice to be given in any such case shall be repealed (*h*). Notice of intention to bury. 43 & 44 Vict. c. 41.

9. The provisions of section seven of the Burial Act, 1853, as to allotment of the unconsecrated part of a burial ground, and the Burial Laws Amendment Act, 1880, as amended by this Act, shall apply to burial grounds provided under the Public Health (Interments) Act, 1879, as if the burial authority were a burial board (*i*). Application of certain provisions of Burial Acts to cemeteries under 42 & 43 Vict. c. 31.

10. Section fifteen of the Cemeteries Clauses Act, 1847 (relating to boundary fences), shall not apply to a burial ground provided under the Public Health (Interments) Act, 1879. Boundary fences. 10 & 11 Vict. c. 65.

11. In this Act the expression "burial authority" shall mean any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act. Meaning of burial authority. 42 & 43 Vict. c. 31.

(*f*) As to what is meant by "set apart for the purposes of burial," see *Re Ponsford and Newport District School Board*, [1894] 1 Ch. 454. See also the Disused Burial Grounds Act, 1884, *ante*, p. 1778, as amended by the Open Spaces Act, 1887, s. 4, *ante*, p. 1804, s. 17 of the Burial Act, 1855, s. 177 of the P. H. A., 1875, and s. 95 of the P. H. A., 1907. Difficult questions arise from time to time as to whether pieces of unconsecrated land vesting in burial authorities which it is proposed to devote to other purposes are "set apart for the purposes of burial," and as to the precise statutory provisions governing the proposed appropriation. In such cases it is advisable to consult the L. G. B. in the matter. And see *St. George's, Hanover Square* (*Rector and Churchwardens*) v. *Westminster Corporation*, [1910] A. C. 225; 74 J. P. 153.

(*g*) The duty of appointing a chaplain was imposed by the Cemeteries Clauses Act, 1847, s. 27, *ante*, p. 1445. The registration of burials in the consecrated portion of the cemetery is regulated by the Cemeteries Clauses Acts, 1847, s. 32, *ante*, p. 1445. When in future there is no chaplain the registration of all burials in the cemetery will be regulated by the Registration of Burials Act, 1864.

Generally as to the duty of an incumbent to perform funeral services, see note to s. 11 of the Cremation Act, 1902, *post*, p. 2025.

(*h*) For a form of notice, see Enc. of Forms and Precedents, vol. III., p. 147, Form No. 38.

(*i*) The Burials Act, 1853, s. 7, provides that in all cases in which any burial board shall provide a new burial ground, that new burial ground shall be divided into consecrated and unconsecrated parts in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions as may be allowed by one of her Majesty's principal Secretaries of State. The application of this section to a cemetery provided by a local authority takes away from such authority the unfettered discretion which they formerly had under the Cemeteries Clauses Act, 1847, s. 35, *ante*, p. 1446.

Repeal.

12. [*Repeal of Acts in Schedule II.*] (*l*)

Short title and commencement.

13.—(1) This Act may be cited as "The Burial Act, 1900," and may be cited and shall be construed with the Burial Acts, 1852 to 1885.

(2) [*Commencement of Act, January 1st*, 1901.] (*l*)

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS GIVING OR REFERRING TO POWERS WHICH ARE TO BE TRANSFERRED TO THE LOCAL GOVERNMENT BOARD.

Session and Chapter.	Short Title.	Enactments.
15 & 16 Vict. c. 85	The Burial Act, 1852	Sections two, six, seven, nine, ten, and forty-four.
16 & 17 Vict. c. 134	The Burial Act, 1853	Sections one, four, five, and six.
18 & 19 Vict. c. 128	The Burial Act, 1855	Sections three, six, seven, eight, and seventeen.
20 & 21 Vict. c. 81	The Burial Act, 1857	Sections nine, ten, twenty-three, and twenty-four.
22 Vict. c. 1	The Burial Act, 1859	Section one.
23 & 24 Vict. c. 64	The Burial Act, 1860	Section four.
34 & 35 Vict. c. 33	The Burial Act, 1871	Section one.

THE ISOLATION HOSPITALS ACT, 1901.

(1 EDW. 7, C. 8.) (*m*)

An Act to amend the Isolation Hospitals Act, 1893. [26 July 1901.]

Transfer by local authority of hospitals for use as isolation hospitals. 38 & 39 Vict. c. 55.

1.—(1) Any local authority (including a joint board) within the meaning of the Public Health Act, 1875, which has provided under that Act (*n*), or any local Act, a hospital for the reception of the sick, may, with the sanction of the Local Government Board, and with the consent of the council, transfer (*o*) it to the council of the county within which the hospital, or any part of the district of the authority, is situate.

(2) The Local Government Board may give their sanction under this section subject to such terms and conditions as they think fit, but shall

(*l*) Sections 12, 13 (2) and Schedule II., repealed by S. L. R. A., 1908.

(*m*) See the Isolation Hospitals Act, 1893, *ante*, p. 1885, which is amended in various particulars by this Act. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

(*n*) Urban and rural district councils are enabled by s. 131 of the P. H. A., 1875, *ante*, p. 235, to provide hospitals for their districts. Moreover, under ss. 279—284 of the same Act, *ante*, pp. 612—615, districts can be combined for hospital purposes by means of provisional orders made by the L. G. B., and confirmed by Parliament, and where this course is adopted, the hospital is provided by a joint board constituted in accordance with the Act.

(*o*) Previously to this enactment, there was some doubt as to the extent of the power of a district council or joint board who had provided a hospital under the P. H. A., 1875, to transfer their hospital to the county council. Now it may be done in accordance with the provisions of this Act.

not give their sanction unless they are satisfied that hospital accommodation sufficient for the needs of the district has been or will be provided.

(3) Any money paid to a local authority on any such transfer shall be applied as the Local Government Board direct, either in repayment of any loan of the local authority, or for any other purpose for which capital moneys may properly be applied.

(4) Any hospital transferred under this section shall be appropriated to a district formed under the Isolation Hospitals Act, 1893 (in this Act referred to as the principal Act) (*p*), and may be adapted as an isolation hospital, and any hospital so appropriated shall be treated as if it had been originally established under that Act for the district. 56 & 57 Vict. c. 68.

(5) The expenses incurred by a county council in, or incidental to, the transfer of any hospital under this Act shall be defrayed as structural expenses incurred by a hospital committee within the meaning of section seventeen of the principal Act (*q*).

Contribution to hospitals provided by local authority.

2.—(1) The power conferred on a county council by section twenty-one of the principal Act (*r*) to contribute to the expenses of an isolation hospital is hereby declared to include the power to contribute, in manner provided by that section, to any hospital provided by a local authority (including a joint board) within the meaning of the Public Health Act, 1875, for the reception of patients suffering from infectious disease whether within the area of the county council or not, but the consent of the Local Government Board shall be required to an annual contribution under this section by the county council to a hospital, the cost of providing which, or of any permanent extension or enlargement of which, has been defrayed otherwise than out of borrowed money.

(2) A county council may borrow, in manner provided by section twenty-two of the principal Act (*s*), any sum required for the contribution of a capital sum under section twenty-one of that Act, as amended by this Act, but sums so borrowed shall not be repayable to the county council out of the local rate, as directed by section twenty-two of that Act (*t*).

Power of hospital committee to contract for hospital accommodation.

3.—(1) The hospital committee of any hospital district under the principal Act may make and give effect to agreements for the use of any hospital or part of a hospital, or for the reception into any hospital of the sick of their district, upon payment of such annual or other sums as may be agreed upon (*u*).

(2) Any expenses incurred by a hospital committee under this section shall be defrayed under the principal Act (*v*) as structural, establishment, or patients' expenses, in such proportions as the committee direct.

Rate of interest.

4.—(1) The interest to be paid in pursuance of section twenty-two of the principal Act (*x*) on any money repayable to a county council shall be interest

(*p*) *I.e.*, by order of the county council under s. 9 of that Act, *ante*, p. 1887.

(*q*) *Ante*, p. 1889, and see s. 18 of the same Act, *ibid.*

(*r*) *Ante*, p. 1890.

(*s*) *Ante*, p. 1890.

(*t*) Instead of being repayable out of the local rate, sums so borrowed will be repayable out of the county fund, so that the expense will ultimately fall upon the whole of the county, and justly so, for the county council are only empowered to make the contribution where they deem it expedient so to do for the benefit of the county.

(*u*) This enactment meets the difficulties formerly experienced by hospital committees under the principal Act in hiring temporarily a hospital from a district council whilst the committee were themselves erecting a permanent hospital, and also owing to the want of power on the part of a hospital committee to send patients from their district to the hospitals of other authorities, and pay for them when the circumstances rendered this desirable, for example, in the case of an epidemic where the committee's hospital was full.

(*v*) See ss. 17 and 18 of that Act, *ante*, p. 1889.

(*x*) *Ante*, p. 1890.

at such a rate as may be agreed upon between the county council and the hospital committee concerned, or, in default of agreement, determined by the Local Government Board.

(2) In section twenty-two of the principal Act (*y*), the words " at the rate of four pounds per centum per annum " are hereby repealed.

Amendment of 56 & 57 Vict. c. 68, s. 8 (3), as to appeals.

5. On any appeal against any order including any area in a hospital district under sub-section three of section eight of the principal Act (*z*), the Local Government Board may by their decision confirm, disallow, or modify the order as they think fit.

Amendment of definition of local authority.

6.—Notwithstanding anything in section twenty-six of the principal Act (*a*), the rural district council shall, to the exclusion of any other authority, be the local authority in the case of any contributory place. But the parish council shall have the same right of appeal to the Local Government Board under sub-section three of section eight of the principal Act as a local authority.

(2) Any liability which immediately before the passing of this Act attached to the local authority in respect of a contributory place, being a parish, shall be transferred to and discharged by the rural district council (*b*).

Copies of orders to be sent to Local Government Board.

7. The county council shall, as soon as may be, send a copy of any order made by them under section nine of the principal Act (*c*) to the Local Government Board.

Representatives of county council on hospital committees.

8. In section ten of the principal Act (which deals with the constitution of hospital committees) (*d*) " representatives of the county council, whether members of the council or not," shall be substituted for " members of the county council."

Short title.

9. This Act may be cited as " The Isolation Hospitals Act, 1901," and this Act and the principal Act may be cited together as the Isolation Hospitals Acts, 1893 and 1901.

THE PUBLIC LIBRARIES ACT, 1901.

(1 EDW. 7, C. 19.) (*e*)

An Act to amend the Acts relating to Public Libraries, Museums, and Gymnasiums, and to regulate the Liability of Managers of Libraries to Proceedings for Libel. [17th August 1901.]

AMENDMENT OF PUBLIC LIBRARIES ACTS, 1892 AND 1893.

Short title and construction. 55 & 56 Vict. c. 53. 56 & 57 Vict. c. 11.

1. This Act may be cited as " The Public Libraries Act, 1901," and shall be construed as one with the Public Libraries Act, 1892 (hereinafter referred to as the principal Act), and the Public Libraries (Amendment) Act, 1893, and those Acts and this Act may be together cited as the Public Libraries Acts, 1892 to 1901.

(*y*) *Ante*, p. 1890.
(*z*) *Ante*, p. 1886.
(*a*) *Ante*, p. 1891.
(*b*) But nevertheless as special expenses under s. 229 of the P. H. A., 1875, *ante*, p. 509.
(*c*) *Ante*, p. 1887.
(*d*) *Ante*, p. 1887.
(*e*) See the Public Libraries Act, 1892, and the Public Libraries (Amendment) Act, 1893, *ante*, pp. 1870, 1880. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.

2. -(1) Any commissioners appointed for a library district under the principal Act (*f*) may be either voters in the district or persons who, though not voters, would, if the district were a rural parish having a parish council, be qualified for election as parish councillors. Qualification of library commissioners.

(2) Section forty-six of the Local Government Act, 1894 (*g*), relating to disqualifications for election to, or membership of, certain authorities, shall have effect as if a library authority, being a body of commissioners appointed under the principal Act, were one of the authorities mentioned in that section. 56 & 57 Vict. c. 73.

3.—(1) A library authority may make byelaws (*h*) for all or any of the following purposes relating to any library, museum, art gallery, or school, which by virtue of the principal Act or this Act is under their control, that is to say: Power to library authority to make byelaws.

(a) for regulating the use of the same and of the contents thereof, and for protecting the same and the fittings, furniture, and contents thereof from injury, destruction or misuse;

(b) for requiring from any person using the same any guarantee or security against the loss of, or injury to, any book or other article;

(c) for enabling the officers and servants of the library authority to exclude or remove therefrom persons committing any offence against the Libraries Offences Act, 1898 (*i*), or against byelaws. 61 & 62 Vict. c 53.

(2) All byelaws under this section shall be made subject and according to the provisions respecting byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*k*), and those sections shall apply as if the expression "local authority" therein included in every case a library authority. 38 & 39 Vict. c. 55.

(3) All offences and penalties under any such byelaw may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts (*l*).

4. The Libraries Offences Act, 1898 (*m*), shall apply to any museum, art gallery or school provided under the Public Libraries Act, 1892. Extension of 61 & 62 Vict. c. 53.

5. —(1) The library authorities of two or more library districts may agree to share, in such proportions and for such period as may be determined by the agreement, the cost of the purchase, erection, repair and maintenance of any library building in one of those districts, and also the cost of the purchase of books and newspapers for such library, and all other expenses connected with the same, and may also agree as to the management and use of the library, and as to the interchange, hire and use of books and newspapers belonging to such authorities respectively (*n*). Power to library authorities to make agreements for use of library.

(*f*) See s. 5 (1) of that Act, *ante*, p. 1872.

(*g*) *Ante*, p. 1024.

(*h*) The power of making byelaws conferred by this section is not in substitution for the power of making regulations conferred by s. 15 of the Public Libraries Act, 1892, *ante*, p. 1875, which is still retained. Such regulations do not require confirmation by the L. G. B., but are not enforceable by penalties. In ordinary cases, however, regulations are sufficient for the attainment of the objects for which they are made; and it is not anticipated that library authorities will be desirous of making byelaws except where experience has shown them to be required.

(*i*) *Ante*, p. 1916.

(*k*) *Ante*, pp. 431—444.

(*l*) Defined by the Interpretation Act, 1889, s. 13 (10).

(*m*) This Act originally extended only to libraries and reading rooms. See s. 2, *ante*, p. 1916.

(*n*) This provision is in substitution for s. 16 (1) of the Public Libraries Act, 1892, which is repealed by s. 14, and Sched., *post*, and any library authority, including an urban authority or a parish council, may enter into an agreement as contemplated by the section with any other library authority whether commissioners or other. Moreover, the agreement may relate to a museum, school for science or art, or art gallery as well as to a library.

(2) This section shall apply, with the necessary modifications, to a museum, school for science, art gallery or school for art in like manner as to a library.

Amendment of 55 & 56 Vict. c. 53, s. 18, as to expenses in parishes.

6. In a library district, being a parish, the sanction of the parish meeting or vestry shall not be required annually (*o*) for raising the sums from time to time due from the parish for defraying the expenses incurred by the library authority, and those sums shall be paid by the overseers on the order of the library authority. But in any parish in a rural district the sanction of the parish meeting shall be required in the year one thousand nine hundred and eleven, and in every tenth year thereafter: Provided that nothing in this section shall affect the operation of section eleven of the Local Government Act, 1894 (*p*).

56 & 57 Vict. c. 73.

Application of 54 & 55 Vict. c. 22, to museum provided under principal Act.

7. An urban authority for whose district the Museums and Gymnasiums Act, 1891 (*q*), has been adopted, either wholly or so far as it relates to museums only, may appropriate for the purposes of that Act a museum provided for the district under the principal Act, and thereupon the Museums and Gymnasiums Act, 1891, shall apply to the museum, as if it were provided under that Act (*r*).

Notice to Local Government Board.

8. On the adoption of the principal Act for any library district, the library authority shall forthwith give notice in writing of such adoption to the Local Government Board. The library authority of every district in which the Act has already been adopted shall give the like notice within three months after the passing of this Act.

Definition of "voter." 56 & 57 Vict. c. 73.

9. In any library district every person who is a parochial elector within the meaning of the Local Government Act, 1894 (*s*), shall be a voter for the purposes of the principal Act and this Act; and parochial electors shall for all the purposes of the principal Act, be substituted for county electors (*t*).

Expenses of repairing damage from subsidence not to be reckoned in limitation of rate.

10. Where in any borough or urban district a building provided under the principal Act shall be damaged through the subsidence of the ground, any expenses incurred by the town council or urban district council in the repair of the damage thereto shall not be reckoned for the purposes of any limitation of rate under section two of the said principal Act (*u*).

EXTENT OF ACT.

Act not to apply to Scotland.

11. This Act shall not apply to Scotland.

(*o*) This was formerly necessary under the Public Libraries Act, 1892, s. 18 (2), *ante*, p. 1876, as affected by s. 7 (3) of the L. G. A., 1894.

(*p*) See *ante*, p. 1950, note (*t*).

The adoptive Acts in the above section include the Public Libraries Acts. As to a *mandamus* to levy a rate exceeding 3*d*. in the £, see *R.* v. *Stoke Parish Council* (1900), 64 J. P. 343; 82 L. T. 198.

And the limit of rate prescribed by s. 2 of the principal Act, *ante*, p. 1870, is also unaffected by the text.

(*q*) See that Act, *ante*, p. 1855.

(*r*) The effect will be to enable the library rate to be relieved from the expense of maintaining it.

(*s*) The persons registered in such portion either of the local government register of electors or of the Parliamentary register of electors as relates to the parish are the parochial electors. See the L. G. A., 1894, s. 2 (1). And in that Act the expression "parochial elector" when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish (*ib.*, s. 75 (2)).

(*t*) The definition of the expression "voter" in s. 27 of the principal Act is consequently repealed.

(*u*) See this section, *ante*, p. 1870.

Application of Act to Ireland.

12. [*Application of certain provisions to Ireland. Repealed and replaced by the Public Libraries (Ireland) Act,* 1902 (2 *Edw.* 7, *c.* 20).]

Application of the Museums and Gymnasiums Act, 1891, and Public Libraries (Amendment) Act, 1893, to London.

Application to London of 54 & 55 Vict. c. 22, and 56 & 57 Vict. c. 11.

13. The Museums and Gymnasiums Act, 1891 (*x*), and the Public Libraries (Amendment) Act, 1893 (*y*), shall extend to the administrative county of London, and for the purpose of such extension shall be modified as follows:

The expression "urban authority" shall include the common council of the city of London (*z*) and a metropolitan borough council, and the expression "district" or "urban district" shall include the city of London and a metropolitan borough;

Any expenses incurred by the common council of the city of London or by a metropolitan borough council under the Museums and Gymnasiums Act, 1891, so far as they are not defrayed by fees and other money received under the said Act, shall be defrayed in the manner in which expenses incurred by that council under the principal Act are payable (*a*).

Repeal.

14. The Acts mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule. Repeal.

SCHEDULE.

Section 14.

Session.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 22 .	The Museums and Gymnasiums Act, 1891.	In section two, the words "or the administrative county of London."
55 & 56 Vict. c. 53 .	The Public Libraries Act, 1892.	Section three, in so far as it is inconsistent with this Act. Sub-section one of section sixteen. Sub-section two of section eighteen, and in sub-section three of the same section the words "but the sanction of the vestry shall not be required for raising the sums from time to time due from the parish for meeting those expenses." So much of section twenty-seven as relates to the definition of a "voter." The First Schedule.

(*x*) *Ante*, p. 1855.
(*y*) *Ante*, p. 1880.
(*z*) As to the city of London, see s. 21 of the principal Act, *ante*, p. 1877.
(*a*) See s. 10 of the Museums and Gymnasiums Act, 1891, *ante*, p. 1857.

THE FACTORY AND WORKSHOP ACT, 1901.

(1 EDW. 7, c. 22). (*b*)

An Act to consolidate with Amendments the Factory and Workshop Acts.
17th August 1901.]

PART I.

HEALTH AND SAFETY.

(i.) *Health.*

Sanitary conditions of factory (*c*).

1.—(1) The following provisions shall apply to every factory as defined by this Act (*d*), except a domestic factory (*e*):

(a) It must be kept in a cleanly state;

(b) It must be kept free from effluvia rising from any drain, watercloset, earthcloset, privy, urinal, or other nuisance;

(c) It must not be so overcrowded while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein (*f*);

(d) It must be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust or other impurities generated in the course of the manufacturing process or handicraft carried on therein, that might be injurious to health (*g*).

38 & 39 Vict. c. 55.

(2) The provisions of section ninety-one of the Public Health Act, 1875 (*h*), with respect to a factory, workshop or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory to which this section applies.

(3) For the purpose of securing the observance of the requirements in this section as to cleanliness in factories, all the inside walls of the rooms of a factory, and all the ceilings or tops of those rooms (whether those walls, ceilings, or tops are plastered or not), and all the passages and staircases of a factory, if they have not been painted with oil or varnished once at least within seven years, shall (subject to any special exceptions made in pursuance of this section) be limewashed once at least within every fourteen months, to date from the time when they were last limewashed; and, if they have been so painted or varnished, shall be washed with hot water and soap once at least within every fourteen months, to date from the time when they were last washed.

(4) Where it appears to the Secretary of State that in any class of factories or parts thereof the provisions of this section with respect to limewashing or washing are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by special order (*i*) grant to that class of factories or parts thereof a special exception that the said provisions shall not apply thereto.

(*b*) This Act has been amended by the Factory and Workshop Act, 1907, *post*, p. 2079. Only those sections of this Act which bear upon the duties of sanitary authorities are here set out. As to the omission of the clause of enactment, see the S. L. R. A., 1894, s. 4.

(*c*) This section reproduces 41 & 42 Vict. c. 16, ss. 3 and 23, as amended by 54 & 55 Vict. c. 75, ss. 3 and 5, and 58 & 59 Vict. c. 37, ss. 1 and 24.

(*d*) See s. 149, *post*. As to tenement factories, see s. 87, *post*, and as to laundries, see the Factory and Workshop Act, 1907, ss. 3 and 4, *post*, p. 2079.

(*e*) Defined by s. 115, *post*. See also s. 111 (5), *post*.

(*f*) See s. 3, *infra*, as to overcrowding.

(*g*) See s. 7, *post*, as to means of ventilation.

(*h*) *Ante*, p. 162.

(*i*) Defined by s. 156, *post*. See Order dated November 2nd, 1903 (Stat. R. & O., Rev. 1904, vol. 4, tit. Factory & Workshop, p. 1), and s. 161 (2), *post*.

(5) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

2.—(1) The provisions of section ninety-one of the Public Health Act, 1875 (*k*), with respect to a factory, workshop or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall apply to every factory, workshop and workplace, except any factory to which the last preceding section applies.

Sanitary condition of workshops and workplaces. 38 & 39 Vict. c. 55.

(2) Every workshop and every workplace within the meaning of the Public Health Act, 1875, must be kept free from effluvia arising from any drain, watercloset, earthcloset, privy, urinal or other nuisance, and, unless so kept, shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(3) Where, on the certificate of a medical officer of health or inspector of nuisances, it appears to any district council that the limewashing, cleansing or purifying of any such workshop or of any part thereof is necessary for the health of the persons employed therein, the council shall give notice in writing to the owner or occupier of the workshop to limewash, cleanse or purify the same or part thereof, as the case may require.

(4) If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a fine not exceeding ten shillings for every day during which he continues to make default, and the council may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

(5) This section shall not apply to any workshop or workplace to which the Public Health (London) Act, 1891, applies.

54 & 55 Vict. c. 76.

3.—(1) A factory shall, for the purposes of this Act, and a workshop shall, for the purposes of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at one time in the room a proportion less than two hundred and fifty or, during any period of overtime, four hundred cubic feet of space to every person (*l*).

Overcrowding of factory and workshop.

(2) Provided that the Secretary of State may, by special order (*m*), modify this proportion for any period during which artificial light other than electric light is employed for illuminating purposes, and may, by like order, as regards any particular manufacturing process or handicraft, substitute for the said figures of two hundred and fifty and four hundred respectively any higher figures, and thereupon this section shall have effect as modified by the order.

(3) Where a workshop or workplace, not being a domestic workshop (*n*), is occupied by day as a workshop and by night as a sleeping apartment, the Secretary of State may, by special order (*o*), modify the proportion of cubic feet of space prescribed by this section and substitute therefor any higher figures, and thereupon this section shall have effect as modified by the order.

(*k*) *Ante*, p. 162.

(*l*) It had been found by experience previous to the passing of the Factory and Workshop Act, 1895, s. 1, from which this enactment is taken, that the limits here prescribed afforded a good general working rule, and the then Home Secretary so stated in the House of Commons before the passing of that Act.

(*m*) Defined in s. 156, *post.* See Order dated 30th December, 1903, as to certain bakehouses (Stat. R. & O. Rev., 1904, vol. 4, tit. Factory and Workshop, p. 4).

(*n*) Defined by s. 115, *post.*

(*o*) Defined by s. 156, *post.* See Order dated 17th January, 1902, as to workshops used as sleeping places (Stat. R. & O. Rev., 1904, vol. 4, tit. Factory and Workshop, p. 4).

(4) There shall be affixed in every factory and workshop a notice specifying the number of persons who may be employed in each room of the factory or workshop by virtue of this section.

Power of Secretary of State to act in default of local authority (*p*).

4.—(1) If the Secretary of State is satisfied that the provisions of this Act, or of the law relating to public health in so far as it affects factories, workshops and workplaces, have not been carried out by any district council, he may, by order, authorise an inspector to take, during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing those provisions.

(2) An inspector authorised in pursuance of this section shall, for the purpose of his duties thereunder, have the same powers with respect to workshops and workplaces as he has with respect to factories, and he may, for that purpose, take the like proceedings for enforcing the provisions of this Act or of the law relating to public health, or for punishing or remedying any default, as might be taken by the district council; and he shall be entitled to recover from the district council all such expenses in and about any proceedings as he may incur and as are not recovered from any other person (*q*).

Powers of inspector as to sanitary defects in factory or workshop remediable by sanitary authority (*r*).

5.—(1) Where it appears to an inspector that any act, neglect or default in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of the act, neglect or default, to the district council in whose district the factory or workshop is situate, and it shall be the duty of the district council to make such inquiry into the subject of the notice, and take such action thereon, as seems to that council proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice.

(2) An inspector may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances or other officer of the district council.

(3) Where notice of an act, neglect or default is given by an inspector under this section to a district council, and proceedings are not taken within one month for punishing or remedying the act, neglect or default, the inspector may take the like proceedings for punishing or remedying the same as the district council might have taken, and shall be entitled to recover from the district council all such expenses in and about the proceedings as the inspector incurs and as are not recovered from any other person and have not been incurred in any unsuccessful proceedings (*q*).

(*p*) This section reproduces and extends the Factory and Workshop Act, 1891, s. 2, except as to laundries, as to which see s. 103 (1) (d), *post.*

It does not appear how the Secretary of State is to be satisfied of the default, but no doubt opportunity will be given to the district council alleged to be in default, to answer the case against them before any order under this section is made.

The provisions of this section should be compared with those of s. 299 of the P. H. A., 1875, *ante*, p. 629, and the differences noted.

(*q*) There are no provisions as to recovery of these expenses like those contained in s. 300 of the P. H. A., 1875, *ante*, p. 632. It would seem, therefore, that in order to recover them, the inspector must bring his action on the statute against the defaulting district council and prove his case in the ordinary way.

(*r*) This section reproduces the Factory and Workshop Act, 1878, s. 4, as amended by the Factory and Workshop Act, 1891, s. 2, and the Factory and Workshop Act, 1895, s. 3. An inspector has power to make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health are complied with so far as respects a factory or workshop, and the persons employed therein. See s. 119 (1) (d), *post.*

6.—(1) In every factory and workshop adequate measures (*s*) must be taken for securing and maintaining a reasonable temperature in each room in which any person is employed; but the measures so taken must not interfere with the purity of the air of any room in which any person is employed. Temperature in factories and workshops (*t*).

(2) The Secretary of State may, by special order (*u*), direct, with respect to any class of factories or workshops, that thermometers be provided, maintained and kept in working order, in such place and position as may be specified in the order.

(3) A factory or workshop in which there is any contravention of this section, or of any order under this section, shall be deemed not to be kept in conformity with this Act.

7.—(1) In every room in any factory or workshop sufficient means of ventilation shall be provided, and sufficient ventilation shall be maintained. Ventilation (*x*).

(2) The Secretary of State may, by special order (*y*), prescribe a standard of sufficient ventilation for any class of factories or workshops, and that standard shall be observed in all factories and workshops of that class; and an order made under this power may supersede any provision of this Act or order of the Secretary of State with respect to ventilation in cotton cloth factories (*a*).

(3) A factory in which there is a contravention of the provisions of this section shall be deemed not to be kept in conformity with this Act, and a workshop in which there is a contravention of the provisions of this section shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(4) If the occupier of a factory or workshop (including a cotton cloth factory in which humidity of the atmosphere is artificially produced) alleges that the whole or part of the expenses of providing the means of ventilation required by this Act ought to be borne by the owner (*b*), he may, by complaint, apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable under the circumstances of the case, regard being had to the terms of any contract between the parties (*c*).

8.—(1) In every factory or workshop or part thereof in which any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, adequate means shall be provided for draining off the wet. Drainage of floors (*x*).

(2) A factory in which there is a contravention of the provisions of this section shall be deemed not to be kept in conformity with this Act, and a workshop in which there is a contravention of the provisions of this section

(*s*) See *Peter Robinson, Ltd.* v. *Plowden* (1903), 67 J. P. 152.

(*t*) This section reproduces the Factory and Workshop Act, 1895, s. 32, adding the amendment embodied in sub-s. (2), but that sub-section does not apply to domestic factories or domestic workshops. See s. 11 (4) (e). As to laundries, see the Factory and Workshop Act, 1907, s. 3, *post*, p. 2079. This section does not apply to men's workshops. See s. 157.

(*u*) Defined by s. 156, *post*, p. 2017. No such order has as yet been made.

(*x*) This section does not apply to domestic factories or domestic workshops (see s. 111 (4) (e), *post*), nor to men's workshops (see s. 157, *post*). As to laundries, see the Factory and Workshop Act, 1907, s. 3, *post*, p. 2079.

(*y*) Defined by s. 156, *post*, p. 2017. See Order dated 4th February, 1902, as to certain humid textile factories other than cotton cloth factories (Stat. R. & O. Rev., 1904, vol. 4, tit. Factory and Workshop, p. 4), *post*, p. 2380.

(*a*) See ss. 90—96.

(*b*) Defined by s. 156, *post*.

(*c*) Compare ss. 14 (4) and 101 (8), *post*.

shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

Sanitary conveniences in factories and workshops (*d*).

9.—(1) Every factory and workshop must be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in, or in attendance at, the factory or workshop, and also where persons of both sexes are, or are intended to be, employed or in attendance, with proper separate accommodation for persons of each sex.

(2) The Secretary of State shall, by special order (*e*), determine what is sufficient and suitable accommodation within the meaning of this section.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

53 & 54 Vict. c. 59.

(4) This section does not apply to the administrative county of London, or to any place where section twenty-two of the Public Health Acts Amendment Act, 1890, is in force (*f*).

(ii.) *Safety.*

* * * * *

Provision of means of escape in case of fire (*g*).

14.—(1) Every factory of which the construction was not commenced on or before the first day of January one thousand eight hundred and ninety-two and in which more than forty persons are employed and every workshop of which the construction was not commenced before the first day of January one thousand eight hundred and ninety-six and in which more than forty persons are employed must be furnished with a certificate from the district council of the district in which the factory or workshop is situate that the factory or workshop is provided with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case, and if the factory or workshop is not so furnished it shall be deemed not to be kept in conformity with this Act; and it shall be the duty of the council to examine every such factory and workshop and, on being satisfied that the factory or workshop is so provided, to give such a certificate as aforesaid. The certificate must specify in detail the means of escape so provided.

(2) With respect to all factories and workshops to which the foregoing provisions of this section do not apply and in which more than forty persons are employed (*h*), it shall be the duty of the district council of every district from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as aforesaid

(*d*) This section reproduces with an amendment embodied in sub-s. (2) the provisions of the Factory and Workshop Act, 1895, s. 35. As to laundries, see the Factory and Workshop Act, 1907, s. 1, *post*, p. 2079.

(*e*) Defined by s. 156, *post*, p. 2017. See the Sanitary Accommodation Order of the 4th February, 1903 (Stat. R. & O. Rev., 1904, vol. 4, tit. Factory and Workshop, p. 5, and Appendix II., *post*, p. 2381), and accompanying Home Office Circular 16th February, 1903; 1 L. G. R., Part III., p. 57.

(*f*) *Ante*, p. 837.

(*g*) This section reproduces with amendments embodied in sub-ss. (6) and (7) the provisions of the Factory and Workshop Act, 1891, s. 7, as amended by the Factory and Workshop Act, 1895, ss. 10 and 11. It seems to extend to moveable as well as to fixed fire-escapes. As to the application of this section to the administrative county of London see s. 153.

(*h*) Adjoining houses let on separate leases by the same owner to the same tenant, who occupied them as one set of manufacturing premises, although in one of them less than forty persons were employed, more than forty being employed in the other, were held to have been rightly dealt with as a single factory under this section (*Re Tubbs and London C. C.* (1904), 68 J. P. 29; 1 L. G. R. 746).

and, in the case of any factory or workshop which is not so provided, to serve on the owner (*i*) of the factory or workshop a notice in writing specifying the measures necessary for providing such means of escape as aforesaid and requiring him to carry them out before a specified date, and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements (*k*); and, unless the requirements are complied with, the owner shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

(3) In case of a difference of opinion between the owner (*i*) of the factory or workshop and the council under the last foregoing sub-section, the difference shall, on the application of either party, to be made within one month after the time when the difference arises, be referred to arbitration, and thereupon the provisions of the First Schedule to this Act shall have effect, and the award on the arbitration shall be binding on the parties thereto, and the notice of the council shall be discharged, amended or confirmed in accordance with the award.

(4) If the owner (*i*) alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirements, he may apply to the county court having jurisdiction where the factory or workshop is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case (*l*).

(5) For the purpose of enforcing the foregoing provisions of this section, an inspector may give the like notice and take the like proceedings as under the foregoing provisions of this Act with respect to matters punishable or remediable under the law relating to public health but not under this Act, and those provisions shall apply accordingly (*m*).

(6) The means of escape in case of fire provided in any factory or workshop shall be maintained in good condition and free from obstruction, and if it is not so maintained the factory or workshop shall be deemed not to be kept in conformity with this Act.

(7) For the purposes of this section the whole of a tenement factory or workshop shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier (*n*).

(*i*) Defined by s. 156, *post*, p. 2016. See *London C.C.* v. *Leyson* (1914), 78 J. P. 91; 110 L. T. 200.

(*k*) This gives the owner the right to enter and do works required in respect of the property included in his demise.

Whether the works are reasonably required or not is to be determined in manner directed by the Act (*Toller* v. *Spiers and Pond, Ltd.*, [1903] 1 Ch. 362; 67 J. P. 234).

(*l*) The effect of this sub-section is to exclude the jurisdiction of the High Court in any action upon any covenant by the lessee to pay these expenses, and notwithstanding any such covenant the county court judge may apportion the expenses as may seem to him just and equitable under the circumstances, though he may take into consideration the terms of the tenancy as part of the circumstances (*Horner* v. *Franklin*, [1905] 1 K. B. 479; 69 J. P. 117). This case apparently overrules *Shephard* v. *Barber* (1903), 67 J. P. 238; 1 L. G. R. 157; and approves *Monk* v. *Arnold*, [1902] 1 K. B. 781; compare s. 7 (4), *ante*, and s. 101 (8), *post*.

(*m*) See s. 5, *ante*.

(*n*) "Tenement factory" is defined by s. 149, *post*. This sub-section does not meet the defect in the previous Acts disclosed by *London C. C.* v. *Lewis*, [1900] 69 L. J. Q. B. 277; 64 J. P. 39, where the upper floors of a building were "factories" within the meaning of the Acts, but the first floor and basement were not and were let to other tenants, and it was held that the owner of the whole building could not be required to provide as a means of escape in case of fire for the persons employed in such factories, a staircase which would encroach on the lower floors of the building. See also *London C. C.* v. *Brass* (1902), 17 T. L. R. 504, where it was held that a notice to provide means of escape specifying works that would involve a trespass, was held not sufficient to justify a conviction for non-compliance; and see *Toller* v. *Spiers and Pond, Ltd.*, *supra*.

(8) All expenses incurred by a district council in the execution of this section shall be defrayed—

(a) In the case of an urban district council, as part of their expenses of the general execution of the Public Health Act, 1875 (*o*); and

38 & 39 Vict. c. 55.

(b) In the case of a rural district council, as special expenses incurred in the execution of the Public Health Act, 1875 (*p*);

and those expenses shall be charged to the contributory place in which the factory or workshop is situate.

Byelaws for means of escape from fire.

15. Every district council shall, in addition to any powers which they possess with reference to the prevention of fire (*r*), have power to make byelaws providing for means of escape from fire in the case of any factory or workshop, and sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*s*), shall apply to any byelaws so made.

Doors of factory or workshop to open from inside (*t*).

16.—(1) While any person employed in a factory or workshop is within the factory or workshop for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, must not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

(2) In every factory or workshop the construction of which was not commenced before the first day of January one thousand eight hundred and ninety-six, the doors of each room in which more persons than ten are employed shall, except in the case of sliding doors, be constructed so as to open outwards.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

* * * * *

Power to make order as to unhealthy or dangerous factory or workshop (*u*).

18.—(1) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any place used as a factory or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb, by order, prohibit the use of that place for the purpose of that process or handicraft, until such works have been executed as are, in the opinion of the court, necessary to remove the danger.

(2) Provided that proceedings shall not be taken under this section in cases where proceedings might be taken by or at the instance of any district council under the provisions of the law relating to public health, unless the inspector is authorised to take proceedings under the foregoing provisions of this Act (*x*) with respect to the enforcement of sanitary provisions in workshops or with respect to matters punishable or remediable under the law relating to public health but not under this Act.

(3) If there is any contravention of an order under this section, the occupier of the place shall be liable to a fine not exceeding forty shillings a day during the contravention.

* * * * *

(*o*) See s. 207 of the P. H. A., 1875, *ante*, p. 468.
(*p*) See s. 229 of the P. H. A., 1875, *ante*, p. 509.
(*r*) See s. 157 (2) of the P. H. A. 1875, *ante*, p. 324.
(*s*) See these sections, *ante*, pp. 431—444.
(*t*) This section reproduces and extends 58 & 59 Vict. c. 37, s. 10 (2) and (3).
(*u*) This section reproduces 58 & 59 Vict. c. 37, s. 2.
(*x*) See ss. 4 and 5, *ante*, p. 1990.

PART II.

Employment.

* * * * *

Supplemental.

58.—(1) Where it appears to the Secretary of State—

Power to impose sanitary requirements as condition of special exceptions (*y*).

(a) That the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of women, young persons or children employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act or at night; or

(b) That the adoption of a special provision as to the total number of hours of employment in each week, the periods of employment and the intervals between such periods is required for the protection of the health of any women or young persons employed in pursuance of such an exception at night,

he may, by special order (*z*), direct that the adoption of the means or provision shall be a condition of such employment.

(2) If it appears to the Secretary of State that the adoption of any such means or provision is no longer required or is, having regard to all the circumstances, inexpedient, he may, by special order, rescind the order directing the adoption, without prejudice to the subsequent making of another order.

Power to rescind orders as to special exceptions (*a*).

59. Where an exception has been granted or extended under this Act by an order of the Secretary of State and it appears to the Secretary of State that the exception is injurious to the health of the women, young persons or children employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts thereof to which the exception was so granted or extended, he may, by special order, rescind the grant or extension, without prejudice to the subsequent making of another order.

Notices, registers, etc., relating to special exceptions (*b*).

60.—(1) An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception made by or in pursuance of

(*y*) This section reproduces the provisions of the Factory and Workshop Act, 1878, s. 63, as amended by the Factory and Workshop Act, 1895, s. 14 (3).

(*z*) Defined by s. 156, *post*. See Order dated 20th December, 1882, as to fish-curing shops made under s. 43 of the Factory and Workshop Act, 1878 (Stat. R. & O. Rev., 1904, vol. 4, tit. Factory and Workshop, p. 6). See also Order dated 15th April, 1884, as to workrooms in connection with drapers' actual establishments in the Boroughs of Manchester and Salford (*ibid.*, p. 8), and Order dated 27th April, 1887, as to factories and workshops for the manufacture of straw hats and bonnets (*ibid.*, p. 9).

By another Order dated the 20th December, 1882 (*ibid.*, p. 31) (*post*, p. 2383), it was imposed as a condition of the employment in any factory or workshop mentioned in Part III. of Schedule III. of the Act of 1878 of any young person or woman in pursuance of an exception under s. 53 of that Act that there shall be a cubic space of at least 400 feet for every young person and woman so employed.

So far as factories are concerned, s. 1 of the Act of 1895 superseded the provisions of this last-mentioned Order. In the case of workshops, however, the effect of that section was not to supersede the Order, but to give the local sanitary authority a co-ordinate power to deal with overcrowding under the law relating to public health. See now s. 3 of the present Act. The Order therefore remains in full force as to workshops, and the conditions which it imposes as to the working of overtime in workshops are enforceable by the factory inspectors.

(*a*) This section reproduces the Factory and Workshop Act, 1878, s. 64.

(*b*) This section reproduces the Factory and Workshop Act, 1878, s. 66, as amended by the Factory and Workshop Act, 1891, s. 14, with the addition of the amendment embodied in sub-s. (6).

this Act, shall serve (*c*) on the inspector for the district, and affix in his factory or workshop notice of his intention so to avail himself and, whilst he avails himself of the exception, shall keep the notice so affixed.

(2) Before the service of the notice on the inspector, the special exception shall not be deemed to apply to the factory or workshop and, after the service of the notice on the inspector, it shall not be competent in any proceeding under this Act for the occupier to prove that the exception does not apply to his factory or workshop, unless he has previously served on the inspector for the district notice that he no longer intends to avail himself of the exception.

(3) The notice so served and affixed must, except as otherwise provided by this Act, specify the hours for beginning and end of the period of employment and the times to be allowed for meals to every woman, young person and child, where they differ from the ordinary hours or times.

(4) An occupier of a factory or workshop shall enter in the prescribed (*d*) register and report to the inspector for the district the prescribed (*d*) particulars respecting the employment of a woman, young person or child in pursuance of a special exception; and, in the case of employment overtime, he shall also cause a notice containing the prescribed (*d*) particulars respecting the employment to be kept affixed in the factory or workshop during the prescribed (*d*) time, and he shall send the report required by this subsection to the inspector not later than eight o'clock in the evening on which any woman, young person or child is employed overtime in pursuance of the exception.

(5) Where the occupier of a factory or workshop avails himself of a special exception made by or in pursuance of this Act and a condition for availing himself of that exception (whether specified in this Act, or in an order of the Secretary of State made under this Act) is not observed in that factory or workshop, then

(a) If the condition relates to the cleanliness, ventilation or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and

(b) In any other case a woman, young person or child employed in the factory or workshop, in alleged pursuance of the exception, shall be deemed to be employed contrary to the provisions of this Act.

(6) Where an occupier of a factory or workshop has served on an inspector a report, in pursuance of this section, of his intention to employ any persons overtime by virtue of a special exception, the report shall, unless withdrawn, be *primâ facie* evidence, in any proceedings under this Act, that the occupier has in fact employed persons overtime in accordance with the report.

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PART V.

SPECIAL MODIFICATIONS AND EXTENSIONS.

(i.) *Tenement Factories.*

Duties of owner of tenement factory (*e*).

87.—(1) The owner (*d*) (whether or not he is one of the occupiers) of a tenement factory (*f*) shall, instead of the occupier, be liable for the observance

(*c*) See s. 148, *post.*
(*d*) Defined by s. 156, *post.*
(*e*) This section reproduces 58 & 59 Vict. c. 37, s. 24, with certain amendments.
(*f*) Defined by s. 149, *post.* Note the omission of the former provision as to occupiers paying a rent in excess of £200 a year.

and punishable for non-observance of the following provisions of this Act, namely, the provisions with respect to—

(i.) the cleanliness, freedom from effluvia, overcrowding and ventilation of factories, contained in section one of this Act, including, so far as they relate to any engine-house, passage or staircase or to any room which is let to more than one tenant, the provisions with respect to limewashing and washing of the interior of a factory;

(ii.) the fencing of machinery and penal compensation for neglect to fence machinery in a factory, except so far as relates to such parts of the machinery as are supplied by the occupier;

(iii.) the notices to be affixed in a factory with respect to the period of employment, times for meals and system of employment of children;

(iv.) the prevention of the inhalation of dust, gas, vapour or other impurity, so far as that provision requires the supply of pipes or other contrivances necessary for working the fan or other means for that purpose; and

(v.) the fixing of an abstract and notices in a factory.

Provided that any occupier may affix in his own tenement the notice with respect to the period of employment, times for meals and system of employment of children, and thereupon that notice shall, with respect to persons employed by that occupier, have effect in substitution for the corresponding notice affixed by the owner.

(2) The provisions of this Act with respect to the power to make orders in the case of dangerous premises shall apply in the case of a tenement factory as if the owner were substituted for the occupier.

(3) In the case of any tenement factory or class of tenement factories used wholly or partly for the weaving of cotton cloth, the owner shall, if the Secretary of State by order (*h*) so directs, be substituted for the occupier for the purpose of the requirements of section seven and section ninety-four of this Act or of any order of the Secretary of State with respect to ventilation.

(4) Where, by or under this section, the owner of a tenement factory is substituted for the occupier with respect to any provisions of this Act, any summons, notice or proceeding, which for the purpose of any of those provisions is by this Act required or authorised to be served on or taken in relation to the occupier, is hereby required or authorised (as the case may be) to be served on or taken in relation to the owner.

* * * * *

(ii.) *Cotton Cloth and other Humid Factories.*

* * * * *

Regulations for the protection of health.

94. In every cotton cloth factory the following regulations (*i*) for the protection of health shall have effect, viz.:

(1) The water used for the purpose of producing humidity shall either be taken from a public supply of drinking water or other source of pure water or shall be effectively purified to the satisfaction of the inspector before being introduced in the form of steam into the factory, and all ducts for the introduction of humidified air shall be kept clean.

(*h*) No such order has as yet been made.

(*i*) Under the Factory and Workshop (Cotton Cloth Factories) Act, 1911, the Secretary of State may make regulations which when made shall be substituted for the provisions in the text.

(2) The pipes for the introduction of steam into a cotton cloth factory in which the temperature is seventy degrees Fahrenheit or over shall, so far as they are within the shed, be as small both in diameter and length as is reasonably practicable and shall be effectively covered with non-conducting material to the satisfaction of the inspector, so as to minimise the amount of heat thrown off by them into the shed.

(3) In the case of a cotton cloth factory in which humidity of the atmosphere is produced by any artificial means whatsoever (except by gas used for lighting purposes only), the arrangements for ventilation shall be such that during working hours in no part of the cotton cloth factory shall the proportion of carbonic acid (carbon dioxide) in the air be greater than nine volumes of carbonic acid to every ten thousand volumes of air.

(4) Unless some other method certified by the inspector to be equally satisfactory is adopted, the outside of the roof of every cotton cloth factory shall be whitewashed every year before the thirty-first day of May, and such whitewash shall be effectively maintained until the thirty-first day of August.

(5) In every cotton cloth factory erected after the second day of February one thousand eight hundred and ninety-eight, a sufficient and suitable cloak room, or cloak rooms, shall be provided for the use of all the persons employed therein, and shall be ventilated and kept at a suitable temperature.

Penalties for non-compliance (*k*).

95. If in the case of any cloth cotton factory there is a contravention of or non-compliance with any of the foregoing provisions with regard to cotton cloth factories, the inspector shall give notice in writing to the occupier (*l*) of the factory of the acts or omissions constituting the contravention or non-compliance and, if those acts or omissions or any of them are continued or not remedied or are repeated within twelve (*m*) months after the notice has been given, the occupier of the factory shall be liable, for the first offence, to a fine not less than five pounds and not exceeding ten pounds and, for every subsequent offence, to a fine not less than ten pounds and not exceeding twenty pounds.

Application of foregoing provisions to other humid factories (*n*).

96. The foregoing provisions of this Act with respect to cotton cloth factories shall apply to every textile factory in which atmospheric humidity is artificially produced by steaming or other mechanical appliances and in which regulations under Part IV. of this Act with respect to humidity are not for the time being in force, but subject to the following qualifications, namely :

(a) The Secretary of State may, by special order, modify the provisions of the Fourth Schedule to this Act with respect to the maximum limits of humidity ;

(b) The reading of the thermometer between seven and eight o'clock in the forenoon shall not be required ; and

(*k*) This section reproduces the Cotton Cloth Factories Act, 1889, s. 13.

(*l*) As to the liability of the owner in certain cases, see s. 87 (3) and (4), *ante*.

(*m*) Twenty-four months under the Factory and Workshop (Cotton Cloth Factories) Act, 1911, s. 1 (2).

(*n*) This section reproduces the Factory and Workshop Act, 1895, s. 31, with certain amendments. It is here inserted simply for the purpose of showing that the application of s. 94 of this Act to other humid factories other than cotton cloth factories is excluded. A special order, dated 24th December, 1898, made under the corresponding provisions of s. 31 of the Factory and Workshop Act, 1895, now repealed, is in force with regard to factories where the spinning of merino, cashmere, and wool by the French or dry process is carried on.

(c) Section ninety-four, respecting regulations for the protection of health in cotton cloth factories, shall not apply; and

(d) The regulations in section ninety-two distinguished as (b), (c), (d), and (e), which are required to be observed with reference to the employment of thermometers, shall not apply to cotton spinning mills.

(iii.) *Bakehouses.*

Sanitary regulations for bakehouses (*o*).

97.—(1) It shall not be lawful to let or suffer to be occupied or to occupy any room or place as a bakehouse, unless the following regulations are complied with:

(a) A watercloset, earthcloset, privy or ashpit must not be within or communicate directly with the bakehouse;

(b) Every cistern for supplying water to the bakehouse must be separate and distinct from any cistern for supplying water to a watercloset;

(c) A drain or pipe for carrying off fæcal or sewage matter must not have an opening within the bakehouse.

(2) If any person lets or suffers to be occupied or occupies any room or place as a bakehouse in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

Penalty for bakehouse being unfit on sanitary grounds (*p*).

98.—(1) Where a court of summary jurisdiction is satisfied, on the prosecution of an inspector or a district council, that any room or place used as a bakehouse is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable to a fine not exceeding, for the first offence, forty shillings and, for any subsequent offence, five pounds.

(2) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, on application, enlarge the time so named; but, if after the expiration of the time as originally named or enlarged by subsequent order the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

Limewashing, painting, and washing of bakehouses (*q*).

99.—(1) All the inside walls of the rooms of a bakehouse, and all the ceilings or tops of those rooms (whether those walls, ceiling or tops are plastered or not) and all the passages and staircases of a bakehouse must either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; and

(a) where the bakehouse is painted with oil or varnished, there must be three coats of paint or varnish and the paint or varnish must be renewed once at last in every seven years and must be washed with hot water and soap once at least in every six months; and

(b) where the bakehouse is limewashed, the limewashing must be renewed once at least in every six months.

(2) A bakehouse in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(*o*) This section reproduces the Factory and Workshop Act, 1883, s. 15, as amended by the Factory and Workshop Act, 1895, s. 27 (2).

(*p*) This section reproduces the Factory and Workshop Act, 1883, s. 16.

(*q*) This section reproduces the Factory and Workshop Act, 1878, s. 34, as extended by the Factory and Workshop Act, 1895, s. 27.

Provision as to sleeping places near bakehouses (*r*).

100.—(1) A place on the same level with the bakehouse and forming part of the same building may not be used as a sleeping place, unless it is constructed as follows; that is to say,

(a) is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

(b) has an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet in area are made to open for ventilation.

(2) If any person lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section, he shall be liable to a fine not exceeding, for the first offence, twenty shillings and, for any subsequent offence, five pounds.

Prohibition of underground bakehouses (*s*).

101.—(1) An underground bakehouse shall not be used as a bakehouse unless it was so used at the passing of this Act (*t*).

(2) Subject to the foregoing provision, after the first day of January one thousand nine hundred and four an underground bakehouse shall not be used unless certified by the district council to be suitable for that purpose (*u*).

(3) For the purpose of this section an underground bakehouse shall mean a bakehouse any baking room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street or of the ground adjoining or nearest to the room. The expression "baking room" means any room used for baking or for any process incidental thereto.

(4) An underground bakehouse shall not be certified as suitable unless the district council is satisfied that it is suitable as regards construction, light, ventilation and in all other respects.

(5) This section shall have effect as if it were included among the provisions relating to bakehouses which are referred to in section twenty-six of the Public Health (London) Act, 1891.

54 & 55 Vict. c. 76.

(6) If any place is used in contravention of this section, it shall be deemed to be a workshop not kept in conformity with this Act.

(7) In the event of the refusal of a certificate by the district council, the occupier of the bakehouse may, within twenty-one days from the refusal, by complaint apply to a court of summary jurisdiction, and, if it appears to the satisfaction of the court that the bakehouse is suitable for use as regards construction, light, ventilation and in all other respects, the court shall thereupon grant a certificate of suitability of the bakehouse, which shall have effect as if granted by the district council.

(8) Where any place has been let as a bakehouse, and the certificate required by this section cannot be obtained unless structural alterations are made, and the occupier alleges that the whole or part of the expenses of the alterations ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable, under the circumstances of the case, regard being

(*r*) This section reproduces the Factory and Workshop Act, 1878, s. 35, as extended by the Factory and Workshop Act, 1885, s. 27.

(*s*) The first sub-section of this section reproduced the Factory and Workshop Act, 1895, s. 27 (3), but the rest was new.

(*t*) Premises which have been long used as an underground bakehouse, although vacant at the passing of this Act, may, if the owner was then seeking a tenant for them as a bakehouse, be considered to be used as a bakehouse within the meaning of this sub-section (*Schwerzerhof* v. *Wilkins*, [1898] 1 Q. B. 641; 62 J. P. 247).

(*u*) This sub-section absolutely prohibits the use of underground bakehouses after 1st January, 1904, unless certified as structurally suitable for the purpose by the local authority (*Evans* v. *Gallon*, [1904] 68 J. P. 537; 2 L. G. R. 1004).

had to the terms of any contract between the parties; or in the alternative the court may, at the request of the occupier, determine the lease (*x*).

Enforcement of law as to retail bakehouses by sanitary authorities (*y*).

102. As respects every retail bakehouse, the provisions of this Part of this Act shall be enforced by the district council of the district in which the retail bakehouse is situate, and not by an inspector; and for the purposes of this section the medical officer of health of the district council shall have and may exercise all the powers of entry, inspection, taking legal proceedings and otherwise of an inspector (*z*).

In this section the expression "retail bakehouse" means any bakehouse or place, not being a factory, the bread, biscuits or confectionery baked in which are sold, not wholesale, but by retail, in some shop or place occupied with the bakehouse.

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PART VI.

Home Work.

List of outworkers to be kept in certain trades (*b*).

107. (*a*) In the case of persons employed in such classes of work as may from time to time be specified by special order (*c*) of the Secretary of State—

(1) The occupier of every factory and workshop and every contractor employed by any such occupier in the business of the factory or workshop shall—

(a) keep in the prescribed (*d*) form and manner and with the prescribed particulars lists showing the names and addresses of all persons directly employed by him, either as workmen or as contractors, in the business of the factory or workshop outside the factory or workshop and the places where they are employed; and

(b) send to an inspector such copies of or extracts from those lists as the inspector may from time to time require; and

(c) send on or before the first day of February and the first day of August in each year copies of those lists to the district council of the district in which the factory or workshop is situate (*e*).

(2) Every district council shall cause the lists received in pursuance of this section to be examined and shall furnish the name and place

(*x*) Compare s. 7 (4), *ante*, and s. 14 (4). The jurisdiction of the High Court in an action on a covenant in a lease by the lessee to pay expenses under this section is excluded by this sub-section (*Stuckey* v. *Hooke*, [1906] 2 K. B. 20; 70 J. P. 393). As to whether the court of summary jurisdiction in making an apportionment can disregard a covenant by the tenant to pay outgoings, etc., see *Goldstein* v. *Hollingsworth*, [1904] 2 K. B. 578; 68 J. P. 383; *Morris* v. *Beal*, [1904] 2 K. B. 585; 68 J. P. 542, and *Stuckey* v. *Hooke*, *supra*, (*per* Moulton, L.J.).

(*y*) This section reproduces the Factory and Workshop Act, 1883, s. 17, and the definition of "retail bakehouse" in s. 18 of that Act.

(*z*) See s. 119, *post*. It is very questionable, however, whether a medical officer of health can be authorised to conduct proceedings under s. 120, *post*, like an inspector.

(*a*) For the effect of s. 157, *post*, on this section, see *Seal* v. *Alexander* (1912), 76, J. P. 157.

(*b*) This section reproduces with amendments the Factory and Workshop Act, 1891, s. 27, as amended by the Factory and Workshop Act, 1895, s. 42.

(*c*) Defined by s. 156, *post*. See the Home Work Order of 23rd May, 1907 (in Appendix II., *post*, p. 2384, and 5 L. G. R., Part III., p. 120), and Home Office Circular, dated 4th October, 1906 (4 L. G. R., Part III., p. 129).

(*d*) Defined by s. 156, *post*.

(*e*) Together with the provisions of the following sub-section and sub-s. (3), this provision will enable the district council to perform their new duties under s. 108, *infra*.

of employment of every outworker included in any such list whose place of employment is outside its district to the council of the district in which his place of employment is.

(3) The lists kept by the occupier or contractor shall be open to inspection by any inspector under this Act and by any officer duly authorised by the district council, and the copies sent to the council and the particulars furnished by one council to another shall be open to inspection by any inspector under this Act.

(4) This section shall apply to any place from which any work is given out and to the occupier of that place and to every contractor employed by any such occupier in connexion with the said work, as if that place were a workshop.

(5) In the event of a contravention of this section by the occupier of a factory, workshop or place or by a contractor, the occupier or con tractor shall be liable to a fine not exceeding forty shillings and, in the case of a second or subsequent offence, not exceeding five pounds (*i*).

Employment of person in unwholesome premises (*f*).

108.—(1) If the district council within whose district is situate a place in which work is carried on for the purpose of or in connexion with the business of a factory or workshop give notice in writing to the occupier of the factory or workshop or to any contractor employed by any such occupier that that place is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor, after the expiration of one month from receipt of the notice, gives out work to be done in that place, and the place is found by the court having cognisance of the case to be so injurious or dangerous, he shall be liable to a fine not exceeding ten pounds.

(2) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

(3) This section shall not apply except in the case of persons employed in such classes of work as the Secretary of State may specify by special order (*g*).

Making of wearing apparel where there is scarlet fever or small-pox (*h*).

109. If the occupier of a factory or workshop or of any place from which any work is given out or any contractor employed by any such occupier causes or allows wearing apparel to be made, cleaned or repaired in any dwelling-house or building occupied therewith whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds.

Prohibition of home work in places where there is infectious disease.

110.—(1) If any inmate of a house is suffering from an infectious disease to which this section applies, the district council of the district in which the house is situate may make an order forbidding any work to which this section applies to be given out to any person living or working in that house or such part thereof as may be specified in the order, and any order so made may be served on the occupier of any factory or workshop or any other place from which work is given out or on the contractor employed by any such occupier (*i*).

(*f*) This section reproduces the Factory and Workshop Act, 1895, s. 5, but with this difference, that the execution of the law is now made the duty of the district council, and not of the inspector. And see note (*i*), *infra*.

(*g*) Defined by s. 156, *post*. See the Home Work Order of the 23rd May, 1907, *post*, p. 2384, and Home Office Circular dated 4th October, 1906 (4 L. G. R., Part III. p. 129).

(*h*) This section reproduces 58 & 59 Vict. c. 37, s. 6.

(*i*) See the Order dated 20th January, 1913 (Stat. R. and O., 1913, p. 160).

(2) The order may be made notwithstanding that the person suffering from an infectious disease may have been removed from the house (*k*), and the order shall be made either for a specified time or subject to the condition that the house or part thereof liable to be infected shall be disinfected to the satisfaction of the medical officer of health (*l*) or that other reasonable precautions (*m*) shall be adopted.

(3) In any case of urgency the powers conferred on the district council by this section may be exercised by any two or more members of the council acting on the advice of the medical officer of health.

(4) If any occupier or contractor on whom an order under this section has been served contravenes the provisions of the order, he shall be liable to a fine not exceeding ten pounds.

(5) The infectious diseases to which this section applies are the infectious diseases required to be notified under the law for the time being in force in relation to the notification of infectious diseases (*n*), and the work to which this section applies is the making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel and any work incidental thereto and such other classes of work as may be specified by special order (*o*) of the Secretary of State.

Application of Act to domestic factories and workshops (*p*).

111. The application of this Act to domestic factories and domestic workshops (*q*) shall be subject to the following provisions:

(1) The regulations with respect to the hours of employment of women, young persons and children shall not apply to any such factory or workshop, and in lieu thereof the following regulations shall be observed therein:

(a) A young person or child shall not be employed in the factory or workshop except during the period of employment hereinafter mentioned; and

(b) The period of employment for a young person shall, except on Saturday, begin at six o'clock in the morning and end at nine o'clock in the evening and shall, on Saturday, begin at six o'clock in the morning and end at four o'clock in the afternoon; and

(c) There shall be allowed to every young person for meals and absence from work during the period of employment not less, except on Saturday, than four hours and a half and, on Saturday than two hours and a half; and

(d) The period of employment for a child on every day either shall begin at six o'clock in the morning and end at one o'clock in the afternoon or shall begin at one o'clock in the afternoon and end at eight o'clock in the evening, or, on Saturday, at four o'clock in the afternoon; and for the purpose of the provisions of this Act respecting education such child shall be deemed, according to circumstances, to be employed in a morning or afternoon set; and

(e) A child shall not be employed before the hour of one in the afternoon in two successive periods of seven days, nor after that

(*k*) Either under s. 124 of the P. H. A., 1875, *ante*, p. 228, or otherwise.

(*l*) Disinfection may also be separately ordered under s. 120 of the P. H. A., 1875, *ante*, p. 224, or s. 5 of the Infectious Disease (Prevention) Act, 1890, *ante*, p. 808.

(*m*) For example, disinfection of bedding, etc., which may be separately ordered under s. 6 of the Infectious Disease (Prevention) Act, 1890, *ante*, p. 811.

(*n*) See s. 6 of the Infectious Disease (Notification) Act, 1889, *ante*, p. 799.

(*o*) See note (*g*), *ante*, p. 2002.

(*p*) This section reproduces the Factory and Workshop Act, 1878, ss. 16, 61, with amendments.

(*q*) "Domestic factory" and "domestic workshop" are defined in s. 115, *post*.

hour in two successive periods of seven days; and a child shall not be employed on Saturday in any week before the hour of one in the afternoon if on any other day in the same week he has been employed before that hour, nor after that hour if on any other day of the same week he has been employed after that hour; and

(f) A child shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.

(2) The requirement as to making certain entries and reports when a woman, young person or child is employed in pursuance of an exception shall not apply except so far as may be prescribed (*r*) from time to time by the Secretary of State.

(3) The provisions of this Act with respect to certificates of fitness for employment shall apply to a domestic factory as if it were a workshop and not a factory.

(4) The following provisions shall not apply to a domestic factory or to a domestic workshop, namely:

(a) the provisions as to meal hours being simultaneous and as to prohibition of employment during meal times;

(b) the provisions as to affixing notices and abstracts and as to specifying certain matters in notices so affixed;

(c) the provisions as to holidays;

(d) the provisions as to notices of accidents;

(e) the provisions as to means of ventilation (*s*), the drainage of floors (*t*), and thermometers (*u*);

(f) the provisions as to the keeping of a general register (*x*).

(5) The provisions of section one of this Act (relating to the sanitary condition of a factory) shall not apply to a domestic factory (*z*).

Dangerous processes in domestic factories and workshops.

112. If any manufacture, process or description of manual labour, which in pursuance of this Act has been certified by the Secretary of State to be dangerous (*b*), is carried on in a domestic factory or workshop, all the provisions of this Act shall apply, as if the place were a factory or workshop other than a domestic factory or workshop.

Abstracts for domestic factories and workshops (*a*).

113. The Secretary of State shall give notice of the provisions of this Act relating to domestic factories and workshops by the publication of the prescribed (*c*) abstract or otherwise, as he thinks fit.

Non-application of Act to certain domestic workshops (*d*).

114.—(1) The exercise in a private house or private room by the family dwelling therein or by any of them (*e*) of manual labour by way of trade

(*r*) No order has yet been made for this purpose.
(*s*) See s. 7, *ante*.
(*t*) See s. 8, *ante*.
(*u*) See s. 6, *ante*.
(*x*) See s. 129, *post*.
(*z*) Domestic factories and domestic workshops also are, however, subject to the provisions of ss. 91 *et seq.* of the P. H. A., 1875, *ante*, p. 162.
(*b*) By s. 79 of this Act, where the Secretary of State is satisfied that any manufacture, machinery, plant, process, or description of manual labour, used in factories or workshops is dangerous or injurious to health, or dangerous to life or limb, either generally or in the case of women, children, or any other class of persons, he may certify that manufacture, machinery, plant, process, or description of manual labour, to be dangerous.
Under the corresponding provisions of the Factory and Workshop Act, 1891, s. 8, the Secretary of State has certified various processes as dangerous, but there is no express provision that such certificates remain in force under this Act.
(*c*) Defined by s. 156, *post*. No such order has as yet been made.
(*d*) This section reproduces 41 & 42 Vict. c. 16, ss. 97, 98.
(*e*) The labour must be exercised only by members of the family living in the house, and

or for purposes of gain in or incidental to any of the following handicrafts, namely—

(i.) straw plaiting, or
(ii.) pillow-lace making, or
(iii.) glove making,

shall not of itself constitute the house or room a workshop within the meaning of this Act.

When it is proved to the satisfaction of the Secretary of State that, by reason of the light character of the handicraft carried on in any private house or private room by the family dwelling therein, or by any of them, it is expedient to extend the provisions of this sub-section to that handicraft, he may, by special order (*f*) extend the same accordingly. Part Two of this Act shall apply, so far as circumstances admit, as if the order were an order extending an exception.

(2) The exercise in a private house or private room by the family dwelling therein or by any of them of manual labour for the purposes of gain in or incidental to any of the following purposes, namely—

(i.) the making of any article or part of any article ; or
(ii.) the altering, repairing, ornamenting (*g*) or finishing of any article ; or
(iii.) the adapting for sale of any article,

shall not of itself constitute that house or room a workshop (*h*), where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to the family.

Definitions of "domestic factory" and "domestic workshop" (*i*).

115. The expressions "domestic factory" and "domestic workshop" mean a private house, room or place which, though used as a dwelling, is by reason of the work carried on there a factory or a workshop, as the case may be, within the meaning of this Act (*k*) and in which neither steam, water nor other mechanical power is used in aid of the manufacturing process carried on there and in which the only persons employed are members of the same family dwelling there.

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PART VIII.

Administration.

(i.) *Inspection.*

* * * * *

Powers of inspectors (*l*).

119.—(1) An inspector shall, for the purpose of the execution of this Act, have power to do all or any of the following things ; namely,—

(a) To enter, inspect and examine at all reasonable times, by day and night, a factory and a workshop and every part thereof, when he has reasonable cause to believe that any person is employed therein,

plaiting and lace-making schools are not within the section. See *Beadon* v. *Parrott* (1871), L. R. 6 Q. B. 718 ; 39 J. P. 647.

(*f*) See note (*c*), *ante*, p. 2004.

(*g*) As applied to laundries, the words "washing, cleaning" should be read in here (see the Factory and Workshop Act, 1907, s. 4, *post*, p. 2079).

(*h*) See definitions of "non-textile factory" and of "workshop" in s. 149, *post*.

(*i*) This section is taken from 41 & 42 Vict. c. 16, s. 16.

(*k*) See s. 149, *post*.

(*l*) This section reproduces the Factory and Workshop Act, 1878, s. 68, as amended by the Factory and Workshop Act, 1891, s. 28, and the Factory and Workshop Act, 1895, ss. 22, 23, 45.

It is here inserted for the elucidation of s. 102, *ante*, and s. 125.

and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and

(b) To take with him in either case a constable into a factory or workshop in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and

(c) To require the production of the registers, certificates, notices and documents kept in pursuance of this Act, and to inspect, examine and copy the same; and

(d) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and

(e) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and

(f) To examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop or such a school as aforesaid or whom he has reasonable cause to believe to be or to have been, within the preceding two months, employed in a factory or workshop, and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and

(g) To exercise such other powers as may be necessary for carrying this Act into effect.

(2) The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry or the exercise of his powers under this Act in relation to that factory or workshop.

(3) If any person wilfully delays an inspector in the exercise of any power under this section or fails to comply with the requisition of an inspector in pursuance of this section or to produce any certificate or document which he is required by or in pursuance of this Act to produce or conceals or prevents or attempts to conceal or prevent a woman, young person or child from appearing before or being examined by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act:

Provided that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

(4) Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds; and where an inspector is so obstructed in a factory or workshop, other than a domestic factory or a domestic workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night twenty, pounds; and, where an inspector is so obstructed in a domestic factory or a domestic workshop, the occupier shall be liable to a fine not exceeding one pound or, where the offence is committed at night, five pounds; and, in the case of a second or subsequent conviction under this section in relation to a factory within two years from the last conviction for the same offence, a fine not less than one pound shall be imposed for each offence.

Right of inspector to conduct proceedings before magistrates (*m*).

120. An inspector, if so authorised in writing under the hand of the Secretary

(*m*) This section reproduces the Factory and Workshop Act, 1895, s. 51. It is here inserted with reference to s. 102, *ante*, and s. 125, *post*, but it is very doubtful if it applies to every officer of a district council acting under those sections.

of State, may, although he is not a counsel or solicitor or law agent, prosecute, conduct or defend before a court of summary conviction or justice, any information, complaint or other proceeding arising under this Act or in the discharge of his duty as inspector.

121. Every inspector shall be furnished with the prescribed certificate of his appointment and, on applying for admission to a factory or workshop, shall, if so required, produce the said certificate to the occupier. Certificate of appointment of inspector (*n*).

* * * * *

(iii.) *Local Authorities.*

125. For the purpose of their duties with respect to workshops and workplaces under this Act and under the law relating to public health, the district council and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings or otherwise as an inspector under this Act (*p*). Powers of local authorities and their officers.

(iv.) *Special Orders.*

126. The following provisions shall apply to such orders made by the Secretary of State in pursuance of this Act as are in this Act referred to as special orders: Provisions as to special orders of Secretary of State (*q*).

(1) The order shall be under the hand of the Secretary of State and shall be published in such manner as the Secretary of State thinks best adapted for the information of all persons concerned and shall come into operation at the date of its publication or at any later date mentioned in the order:

(2) The order may be temporary or permanent, conditional or unconditional and, whether granting or extending an exception or prohibition or directing the adoption of any special means or provision or rescinding a previous order or effecting any other thing, may do so either wholly or partly:

(3) The order shall be laid as soon as may be before both Houses of Parliament and, if either House of Parliament, within the next forty days after the order has been so laid before that House, resolves that the order ought to be annulled, it shall, after the date of that resolution, be of no effect, without prejudice to the validity of anything done in the meantime under the order or to the making of a new order:

(4) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the making of the order.

(*n*) This section reproduces the first paragraph of the Factory and Workshop Act, 1878, s. 70. It is here inserted with reference to s. 102, *ante*, and s. 125, *post*, but it is very doubtful whether any officer of the district council acting under those sections can be required to produce any certificate or other evidence of his appointment on applying for admission to a retail bakehouse, or to a workshop or workplace.

(*p*) As to the powers of an inspector, see ss. 119—121, *ante*. It will be observed that the powers hereby conferred are conferred without prejudice to their other powers. See, as to powers of entry, note (*a*) to s. 305 of the P. H. A., 1875, *ante*, p. 636, and as to legal proceedings, s. 259 of that Act, *ante*, p. 577.

(*q*) This section reproduces 41 & 42 Vict. c. 16, s. 65, as amended by 58 & 59 Vict. c. 37, s. 47. It is here inserted with reference to ss. 1 (4), 3 (2), (3), 6 (2), 7 (2), 9 (2), 58 (1), 59, 107, 108 of this Act.

(v.) *Notices, Registers and Returns.*

Notice of occupation of factory or workshop (*r*).

127.—(1) Every person shall, within one month after he begins to occupy a factory or workshop, serve on the inspector for the district a written notice containing the name of the factory or workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein and the name of the person or firm under which the business of the factory or workshop is to be carried on.

(2) In the event of a contravention of this section by the occupier of a factory or workshop, he shall be liable to a fine not exceeding five pounds.

(3) Where an inspector receives notice in pursuance of this section with respect to a workshop, he shall forthwith forward the notice to the district council of the district in which the workshop is situate.

* * * * *

General registers (*s*).

129.—(1) In every factory and workshop there shall be kept a register, called the general register, showing in the prescribed form the prescribed particulars as to—

(a) the children and young persons employed in the factory or workshop; and

(b) the lime-washing of the factory or workshop; and

(c) every accident occurring in the factory or workshop of which notice is required to be sent to an inspector; and

(d) every special exception of which the occupier of the factory or workshop avails himself; and

(e) such other matters as may be prescribed.

(2) Where any entry is required by this Act to be made in the general register, the entry made by the occupier of a factory or workshop on his behalf shall, as against him, be admissible as *primâ facie* evidence of the facts therein stated, and the failure to make any entry so required with respect to the observance of any provision of this Act shall be admissible as *primâ facie* evidence that that provision has not been observed.

(3) The register shall at all reasonable times be open to inspection by the certifying surgeon of the district.

(4) The occupier of a factory or workshop shall send to an inspector such extracts from the general register as the inspector from time to time requires for the execution of his duties under this Act.

(5) If in any factory or workshop any requirement of this section is not complied with, the occupier shall be liable to a fine not exceeding five pounds.

* * * * *

Registers of workshops.

131. Every district council shall keep a register of all workshops situate within their district.

Report of medical officer of health on administration of Act (*u*).

132. The medical officer of health of every district council shall, in his annual report to them, report specifically on the administration of this Act in workshops and workplaces, and he shall send a copy of his annual report or so much of it as deals with this subject to the Secretary of State.

(*r*) This section reproduces the Factory and Workshop Act, 1878, s. 75, as extended by the Factory and Workshop Act, 1891, s. 26, and amended by the Factory and Workshop Act, 1895, ss. 41, 44 (1).

(*s*) This section reproduces the Factory and Workshop Act, 1878, s. 77, as amended by the Factory and Workshop Act, 1895, ss. 15 and 43, with amendments.

(*u*) This section is new. As to the annual report of the medical officer of health, see the General Orders of the L. G. B., dated July 29th, 1910, and December 13th, 1910, prescribing regulations as to the medical officer of health, which are set out in Appendix II., *post*, pp. 2474, 2483.

Miscellaneous Provisions.

133. Where any woman, young person or child is employed in a workshop in which no abstract of this Act is affixed as by this Act required, and the medical officer of the district council becomes aware thereof, he shall forthwith give written notice thereof to the inspector for the district.

Notice by medical officer of health of employment of woman, young person or child in workshops (*x*).

134. Where the age of any young person under the age of sixteen years or child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the employment in labour or elementary education of the young person or child, any person shall on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register, under the Births and Deaths Registration Acts, 1836 to 1874, of the birth of that young person or child; and such form of requisition shall on request be supplied without charge by every superintendent registrar and registrar of births, deaths, and marriages.

Certificate of birth in case of young person under 16 and children.

PART IX.

Legal Proceedings.

135.—(1) If a factory or workshop is not kept in conformity with this Act, the occupier (*z*) thereof shall be liable to a fine not exceeding ten pounds, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence.

Fine for not keeping factory or workshop in conformity with Act (*y*).

(2) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act. The court may, on application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day on which the non-compliance continues.

136 (*a*). If any person is killed or dies or suffers any bodily injury or injury to health, in consequence of the occupier (*c*) of a factory or workshop having neglected to observe any provision of this Act or any regulation made in pursuance of this Act, the occupier of the factory or workshop shall be liable (*d*) to a fine not exceeding one hundred pounds and, in the case of

Fines in case of death or injury (*b*).

(*x*) This section reproduces the Factory and Workshop Act, 1891, s. 3 (3).

(*y*) This section reproduces the Factory and Workshop Act, 1878, s. 81, as amended by the Factory and Workshop Act, 1891, s. 28.

(*z*) In the case of a tenement factory the owner is under s. 87, *ante*, made liable for certain offences instead of the occupier. The occupier may also, under s. 141, *post*, exempt himself on conviction of the actual offender. As to the time within which proceedings must be taken see s. 146, *post*.

(*a*) See the case of *R.* v. *Taylor*, in the notes to s. 146, *post*, p. 2012.

(*b*) This section reproduces the Factory and Workshop Act, 1878, s. 82, as amended by the Factory and Workshop Act, 1895, s. 13, with the further amendments embodied in the proviso.

(*c*) In the case of a tenement factory the owner is, under s. 87, *ante*, made liablel instead of the occupier.

(*d*) Notwithstanding the penalty imposed by this section, an action for damages will also lie in respect of personal injuries received by a workman through a breach by the employer of his statutory duty to fence; and in such action the defence of common employment is not applicable (*Groves* v. *Lord Wimborne*, [1898] 2 Q. B. 402).

a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence; and the whole or any part of the fine may be applied for the benefit of the injured person or his family or otherwise, as the Secretary of State determines:

Provided as follows:

(a) In the case of injury to health the occupier shall not be liable under this section, unless the injury was caused directly by the neglect (*e*):

(b) The occupier shall not be liable to fine under this section if an information against him for not observing the provision or regulation to the breach of which the death or injury was attributable has been heard and dismissed previous to the time when the death or injury was inflicted (*f*).

* * * * *

Forgery of certificates, false entries, and false declarations (*g*).

139. If any person—

(a) forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided); or

(b) gives signs or any such certificate, knowing the same to be false in any material particular; or

(c) knowingly utters or makes use of any certificate so forged, counterfeited or false as aforesaid; or

(d) knowingly utters or makes use of, as applying to any person, a certificate which does not so apply; or

(e) personates any person named in a certificate; or

(f) falsely pretends to be an inspector; or

(g) wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid; or

(h) wilfully makes a false entry in any register, notice, certificate or document required by this Act to be kept or served or sent; or

(i) wilfully makes or signs a false declaration under this Act; or

(j) knowingly makes use of any such false entry or declaration,

he shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, with or without hard labour.

Fine on person actually committing offence for which occupier is liable (*h*).

140. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine has in fact been committed by some agent, servant, workman or other person, that agent, servant, workman or other person shall be liable to the like fine as if he were the occupier.

Power of occupier to exempt himself from fine on conviction of the actual offender (*i*).

141.—(1) Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and

(*e*) In the case of bodily injury it was held in *Blenkinsop* v. *Ogden*, [1898] 1 Q. B. 783, that contributory negligence was no answer to a complaint under the Factory and Workshop Act, 1878, s. 82.

(*f*) It appears to make no difference whether the information was dismissed on the merits or not.

(*g*) This section reproduces the Factory and Workshop Act, 1878, s. 85.

(*h*) This section reproduces the Factory and Workshop Act, 1878, s. 86.

(*i*) This section reproduces the Factory and Workshop Act, 1878, s. 87, as amended by the Factory and Workshop Act, 1895, s. 50. *Cf.* the Margarine Act, 1887, s. 5, *ante*, p. 1801, and the Locomotives Act, 1898, s. 13 (2), *ante*, p. 1913.

if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court—

(a) that he has used due diligence to enforce the execution of this Act; and

(b) that the said other person had committed the offence in question without his knowledge, consent or connivance,

that other person shall be summarily convicted of the offence, and the occupier shall be exempt from any fine. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence—

(a) that the occupier of the factory or workshop has used all due diligence to enforce the execution of this Act; and

(b) by what person the offence has been committed; and

(c) that it has been committed without the knowledge, consent or connivance of the occupier and in contravention of his orders,

the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier of the factory or workshop.

* * * * *

143. A person shall not be liable, in respect of a repetition of the same kind of offence from day to day, to any larger amount of fines than the highest fine fixed by this Act for the offence, except— Limit to cumulative fines (*k*).

(a) where the repetition of the offence occurs after an information has been laid for the previous offence; or

(b) where the offence is one of employing two or more persons, contrary to the provisions of this Act.

144.—(1) All offences under this Act shall be prosecuted and all fines under this Act shall be recovered, on summary conviction, before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts. Prosecution of offences and recovery and application of fines (*l*).

(2) A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

(3) All fines imposed in pursuance of this Act shall, save as otherwise expressly provided for by this Act (*m*), be paid into the Exchequer.

(4) Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop the occupier of the factory or workshop, and the father, son or brother of the occupier of the factory or workshop shall not be qualified to act as a member of the court (*n*).

(5) A person engaged in, or being an officer of any association of persons engaged in, the same trade or occupation as a person charged with any offence under this Act shall not act as a justice of the peace in hearing and determining the charge (*n*).

145. If any person feels aggrieved by a conviction or order made by a Appeal to quarter sessions (*o*).

(*k*) This section reproduces the Factory and Workshop Act, 1878, s. 88.

(*l*) This section reproduces 41 & 42 Vict. c. 16, s. 89, with the amendment embodied in sub-s. (5).

(*m*) See s. 136, *ante*.

(*n*) With reference to the subject of this sub-section, see also s. 258 of the P. H. A., 1875, *ante*, p. 572, and the notes thereto.

(*o*) This section reproduces the Factory and Workshop Act, 1878, s. 90, as amended by the Factory and Workshop Act, 1883.

court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom to quarter sessions.

Limitation of time and general provisions as to summary proceedings (*p*).

146. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:

(1) The information shall be laid within three months after the date at which the offence comes to the knowledge of the inspector for the district within which the offence is charged to have been committed, or, in case of an inquest being held in relation to the offence, then within two months after the conclusion of the inquest, so, however, that it be not laid after the expiration of six months from the commission of the offence (*q*):

(2) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more:

(3) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop or the title of the firm by which the occupier employing persons in the factory or workshop is usually known:

(4) A conviction or order made in any matter arising under this Act, either originally, or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction, against which a person is authorised by this Act to appeal, shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case (*r*).

Evidence of employment.

147.—(1) If a person is found in a factory or workshop, except at meal times, or while all the machinery of the factory or workshop is stopped, or for the sole purpose of bringing food to the persons employed in the factory or workshop between the hours of four and five o'clock in the afternoon, he shall, until the contrary is proved, be deemed for the purposes of this act to have been then employed in the factory or workshop:

Provided that the yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory or workshop in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory or workshop within

(*p*) This section reproduces the Factory and Workshop Act, 1878, s. 91, as amended by the Factory and Workshop Act, 1883, and the Factory and Workshop Act, 1891, s. 29.

(*q*) On January 21st, the fact that certain machinery was unfenced, in contravention of s. 10, *ante*, came to the knowledge of the inspector of the district. On July 31st, in consequence of the machinery still being unfenced, a person suffered bodily injury. On October 24th, an information was laid charging that on July 31st the defendant's factory was not kept in conformity with the Act whereby a person suffered bodily injury. The magistrate dismissed the information on the ground that it was out of time, inasmuch as it had not been laid within three months of January 21st. It was held that ss. 135 and 136 create separate and distinct offences; that the offence with which the defendants were charged was the offence under s. 136; and that, that offence having been committed on July 31st, the information had been laid in time (*R.* v. *Taylor*, [1908] 2 K. B. 237; 72 J. P. 238). In May, 1905, and again on March 12th, 1908, an inspector visited the respondents' factory, and found that the flywheel of an engine was not fenced as required by s. 10 (1), *ante*. He again visited the factory on July 1st, 1908, and found that the flywheel was still unfenced. On July 22nd, 1908, he laid an information against the respondents under s. 135, *ante*, for that the factory was on July 1st, 1908, not kept in conformity with the Act in that the flywheel was not securely fenced as required by s. 10. It was held that the information had been laid within three months after the date at which the offence charged in the information came to the knowledge of the inspector within s. 146 (*Verney* v. *Mark Fletcher & Sons, Ltd.*, [1909] 1 K. B. 445; 73 J. P. 131).

(*r*) With this sub-section compare s. 262 of the P. H. A., 1875, *ante*, p. 579, and notes thereon.

the meaning of this enactment; and this enactment shall not apply to a domestic factory or workshop.

(2) Where a young person or child is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the young person or child is not of that age.

(3) A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

(4) A copy of a conviction for an offence against this Act, purporting to be certified under the hand of the clerk of the peace having the custody of the conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, on the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

Service of notices and documents, etc. (s).

148. Any notice, order, requisition, summons and document required or authorised to be served or sent for the purposes of this Act—

(a) may be served and sent by post or by delivering the same to or at the residence of the person on or to whom it is to be served or sent or (where he is the owner of a factory or workshop) by delivering the same or a true copy thereof to his agent or (where he is the occupier of a factory or workshop) by delivering the same or a true copy thereof to his agent or to some person in the factory or workshop; and

(b) where it is required to be served on or sent to the occupier of a factory or workshop, shall be deemed to be properly addressed if addressed to the occupier of the factory or workshop at the factory or workshop with the addition of the proper postal address, but without naming the person who is the occupier.

PART X.

Supplementary.

(i.) *Application and Definitions.*

Factories and workshops to which Act applies (*t*).

149.—(1) Subject to the provisions of this section, the following expressions have in this Act the meanings hereby assigned to them; that is to say:

The expression "textile factory" (*u*) means any premises wherein or within the close or curtilage of which steam, water or other mechanical power is used to move or work any machinery employed in preparing, manufacturing or finishing or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof:

(*s*) This section reproduces the Factory and Workshop Act, 1878, s. 79, and the Factory and Workshop Act, 1895, s. 49. *Cf.* s. 267 of the P. H. A., 1875, *ante*, p. 590, and notes thereon.

(*t*) This section reproduces the Factory and Workshop Act, 1878, s. 93, as amended by the Factory and Workshop Act, 1891, s. 31.

(*u*) On this definition reference may be made to the following cases decided under repealed Acts, viz., *Taylor* v. *Hicks* (1862), 12 C. B. (n.s.) 152; 31 L. J. M. C. 242; *Howarth* v. *Coles* (1862), 12 C. B. (n.s.) 139; 31 L. J. M. C. 262; *Haydon* v. *Taylor* (1864), 4 B. & S. 519; 33 L. J. M. C. 30; *Whymper* v. *Harney* (1865), 18 C. B. (n.s.) 243; 34 L. J. M. C. 113.

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works and hat works shall not be deemed to be textile factories :

The expression " non-textile factory " means—

(a) any works, warehouses, furnaces, mills, foundries or places named in Part One of the Sixth Schedule to this Act ; and

(b) any premises or places named in Part Two of the said schedule wherein or within the close or curtilage or precincts of which steam, water or other mechanical power is used in aid of the manufacturing process (*x*) carried on there ; and

(c) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—

(i.) the making of any article or of part of any article ; or

(ii.) the altering, repairing, ornamenting or finishing (*y*) of any article ; or

(iii.) the adapting for sale (*z*) of any article,

and wherein or within the close or curtilage or precincts of which steam, water or other mechanical power is used in aid of the manufacturing process carried on there :

The expression " factory " means textile factory and non-textile factory or either of those descriptions of factories :

The expression " tenement factory " means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories ; and for the purpose of the provisions of this Act with respect to tenement factories, all buildings situate within the same close or curtilage shall be treated as one building (*a*).

The expression " workshop " means—

(a) any premises or places named in Part Two of the Sixth Schedule to this Act, which are not a factory ; and

(b) any premises, room or place, not being a factory, in which premises, room or place or within the close or curtilage or precincts of which premises any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—

(i.) the making of any article or of part of any article ; or

(*x*) Rags were purchased and then sorted by hand. In some cases they were first dusted by a shaker driven by electric power. They were then sold wholesale. It was held that this did not constitute a manufacturing process (*Paterson* v. *Hunt* (1909), 73 J. P. 496 ; 101 L. T. 571). These words do not necessarily refer to something being produced, but to the business carried on ; a laundry which is carried on for the purpose of gain and in which mechanical power is used for driving the machines, is a non-textile factory (*Owner* v. *Cottenham Sanitary Steam Laundry Co., Ltd.* (1910), 74 J. P. 219 ; 102 L. T. 571). Premises in which carpets are beaten by the aid of mechanical power are a "factory," inasmuch as carpet beating is a "manufacturing process" (*Johnston* v. *Lalonde Brothers and Parham*, [1912] 3 K. B. 218 ; 76 J. P. 379).

(*y*) As to finishing of cotton fabrics, see *Howarth* v. *Coles*, *ante*, p. 2013 ; finishing of bricks, *Squire* v. *Stanley* (1901), 65 J. P. 467 ; 84 L. T. 535.

(*z*) As to adapting for sale of bottled beer, see *Law* v. *Graham*, [1901] 2 K. B. 327 ; 65 J. P. 501 ; *Hoare* v. *Truman, Hanbury and Buxton, Ltd.* (1902), 71 L. J. K. B. 380 ; 66 J. P. 342 ; and of bonbons, *Fullers* v. *Squire*, [1901] 2 K. B. 209 ; 65 J. P. 660.

(*a*) A building in which the mechanical power employed in the different parts of the building occupied by different persons is derived from separate sources situated upon those parts respectively is not "a tenement factory," inasmuch as mechanical power is not "supplied to" the different parts (*Re Brass and London C. C.*, [1904] 2 K. B. 336 ; 68 J. P. 365). See also *Toller* v. *Spiers and Pond, Ltd.*, *ante*, p. 1993.

(ii.) the altering, repairing, ornamenting or finishing of any article; or
(iii.) the adapting for sale of any article,

and to or over which premises, room or place the employer of the persons working therein has the right of access or control:

The expression "workshop" includes a tenement workshop.

The expression "tenement workshop" means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier.

(2) A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of this Act to be a separate factory or workshop (*aa*).

(3) A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

(4) Where a place situate within the close, curtilage or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop and be regulated accordingly.

(5) A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are in the open air (*b*).

(6) The exercise by any young person or child in any recognised efficient school, during a portion of the school hours, of any manual labour for the purpose of instructing the young person or child in any art or handicraft, shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

Application to Crown factories and workshops (*c*).

150.—(1) This Act applies to factories and workshops belonging to the Crown; but in case of any public emergency the Secretary of State may, by order, to the extent and during the period named by him, exempt from this Act any factory or workshop belonging to the Crown or any factory or workshop in respect of work which is being done on behalf of the Crown under a contract specified in the order.

(2) A factory or workshop belonging to or in the occupation of the Crown shall not be excluded from the operation of this Act by reason only that it is not carried on by way of trade or for the purpose of gain.

(3) The powers conferred by this Act on a district council or other local authority shall, in the case of a factory or workshop belonging to or in the occupation of the Crown, be exercised by an inspector under this Act.

Power to treat separate branches as separate factories or workshops (*d*).

151. The Secretary of State may, by special order (*e*), direct, with respect to any class of factories or workshops, that different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of this Act, be treated as if they were different factories or workshops.

* * * * *

(*aa*) See *London C. C.* v. *Leyson* (1914), 78 J. P. 91; 110 L. T. 200.

(*b*) See the following cases decided under older statutes: *Palmer's Shipbuilding and Iron Co.* v. *Chaytor* (1869), L. R. 4 Q. B. 209; *Kent* v. *Astley* (1869), L. R. 5 Q. B. 19; *Redgrave* v. *Lee* (1874), L. R. 9 Q. B. 363.

(*c*) This section is taken from the Factory and Workshop Act, 1878, s. 93, with amendments embodied in sub-ss. (2) and (3).

(*d*) This section reproduces the Factory and Workshop Act, 1895, s. 39.

(*e*) Defined by s. 156, *post*. See also s. 126, *ante*.

Application of Act to London.

153.—(1) In the application to the administrative county of London of the section of this Act relating to the means of escape from fire, the London County Council shall take the place of the district council, and their expenses in the execution of that section shall be defrayed as part of their expenses in the management of the London Building Act, 1894.

(2) In the application to the administrative county of London of the section of this Act, giving power to make byelaws providing for means of escape from fire, the reference to a district council shall be construed as a reference to the London County Council.

(3) The power of the London County Council under section one hundred and sixty-four of the London Building Act, 1894, to make byelaws with respect to the means of escape from fire in buildings exceeding sixty feet in height shall extend to all factories and workshops whether exceeding sixty feet in height or not.

(4) Subject as aforesaid, references in this Act to a district council and the district thereof shall, as regards the city of London, be construed as references to the Court of Common Council and the city, and, as regards any other part of the administrative county of London, as references to the council of a metropolitan borough and the metropolitan borough.

Application of Act to county boroughs (*f*).

154. References in this Act to a district council and the district thereof shall be construed as including references to the council of a county borough and the county borough.

Saving for existing powers of district councils (*g*).

155. The powers conferred by this Act on district councils shall be in addition to, and not in substitution for, any other powers which they may possess.

General definitions (*h*). 38 & 39 Vict. c. 13.

156.—(1) In this Act unless the context otherwise requires,—

The expression "bank holiday" means a holiday under the Holidays Extension Act, 1875:

"Child."

The expression "child" means a person who is under the age of fourteen years, and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school mentioned in Part III. of this Act:

"Machinery."

The expression "machinery" includes any driving strap or band:

"Mill-gearing."

The expression "mill-gearing" comprehends every shaft, whether upright, oblique or horizontal, and every wheel, drum or pulley, or other applicance by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process:

"Night."

The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning:

"Owner."

The expression "owner" has the meaning given to it by section four of the Public Health Act, 1875 (*i*):

"Parent."

The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages of, a young person or child:

(*f*) This section does not alter the law. County boroughs and county borough councils were sanitary districts and authorities respectively within the meaning of the repealed statutes.

(*g*) *Cf.* s. 341 of the P. H. A., 1875, *ante*, p. 662, and s. 10 of the P. H. A., 1890, *ante*, p. 823.

(*h*) This section is taken from the Factory and Workshop Act, 1878, s. 96, with amenments.

(*i*) *Ante*, p. 8.

The expression "prescribed" means prescribed for the time being by the Secretary of State: "Prescribed."

The expression "process" includes the use of any locomotive: "Process."

The expression "special order" means an order which is subject to the provisions of section one hundred and twenty-six of this Act (*k*) with regard to special orders of the Secretary of State: "Special order."

The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night: "Week."

The expression "woman" means a woman of the age of eighteen years and upwards: "Woman."

The expression "young person" means a person who has ceased to be a child and is under the age of eighteen years: "Young person."

(2) For the purposes of this Act, employment shall be deemed to be continuous unless interrupted by an interval of at least half an hour.

(3) The factories and workshops named in the Sixth Schedule to this Act are in this Act referred to by the names therein assigned to them.

(4) References in this Act to regulations made under this Act shall be construed as including references to special rules established or requirements made under any previous Act.

157. The following provisions of this Act shall not apply to men's workshops, that is to say, workshops conducted on the system of not employing any woman, young person or child therein: "Men's workshops" (*l*).

(1) The sections in Part I. relating to temperature (*m*), thermometers (*n*), means of ventilation (*o*), drainage of floors (*p*), sanitary conveniences (*q*), opening of doors (*r*), power to make orders as to dangerous machinery (*s*) and inquests (*t*);

(2) Part II. and Part III.;

(3) The sections in Part IV. relating to fans and to lavatories and meals;

(4) Part VII. (*u*);

(5) The section of Part VIII. relating to the affixing of abstracts and notices (*x*) and the keeping of a general register (*y*), and the first sub-section of the section relating to periodical returns (*z*).

158. Nothing in this Act shall extend to any young person being a mechanic, artisan or labourer working only in repairing either the machinery in, or any part of, a factory or workshop. Saving for young persons employed in repairs (*a*).

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(*k*) *Ante*, p. 2007.

(*l*) This section reproduces the effect of the former statutes with regard to workshops of this kind.

(*m*) Section 6 (1), *ante*, p. 1991.

(*n*) Section 6 (2), *ante*, p. 1991.

(*o*) Section 7, *ante*, p. 1991.

(*p*) Section 8, *ante*, p. 1991.

(*q*) Section 9, *ante*, p. 1992.

(*r*) Section 16, *ante*, p. 1994.

(*s*) Section 17.

(*t*) Section 21.

(*u*) In *Seal* v. *Alexander*, [1912] 1 K. B. 469; 76 J. P. 156, it was held that in view of the exception contained in this sub-section, no offence was committed by the occupier of a men's workshop who failed to furnish written particulars under s. 116, *ante*, of the rate of wages paid to an outworker paid by the piece and engaged in making up wearing apparel given out to him from the workshop, notwithstanding the fact that the provisions of s. 107, *ante*, had been applied by order to this class of work, and that s. 107 is not in Part VII. of the Act.

(*x*) Section 128.

(*y*) Section 129, *ante*, p. 2008.

(*z*) Section 130.

(*a*) This section is taken from the Factory and Workshop Act, 1878, s. 100.

(iii.) *Repeal, etc.*

Repeal of Acts.

161. The Acts specified in the Seventh Schedule to this Act are hereby repealed as from the dates and to the extent in that schedule mentioned ;

Provided that—

(1) All notices affixed in a factory or workshop in pursuance of any enactment hereby repealed shall, so far as they are in accordance with the provisions of this Act, be deemed to have been affixed in pursuance of this Act ; and

(2) All orders and all special rules and requirements made or having effect under any enactment hereby repealed shall continue to have effect as if they had been made under this Act ; and nothing in this Act shall be construed as altering the mode of making such special rules or requirements whilst the power to make them continues in force ; and

(3) All inspectors, sub-inspectors, certifying surgeons, officers, clerks and servants appointed in pursuance of any enactment hereby repealed shall continue in office and shall be subject to removal and have the same powers and duties as if they had been appointed in pursuance of this Act ; and

(4) All certificates of fitness for employment granted in pursuance of any certificate hereby repealed shall have effect as if granted in pursuance of this Act, and all registers kept in pursuance of any enactment hereby repealed shall, until otherwise directed by the Secretary of State, be deemed to be the registers required by this Act.

Commencement of Act.

162. This Act shall come into operation on the first day of January one thousand nine hundred and two.

Short title.

163. This Act may be cited as "The Factory and Workshop Act, 1901."

SCHEDULES.

FIRST SCHEDULE.

Section 14.

PROVISIONS AS TO ARBITRATIONS.

(1) The parties to the arbitrations are in this schedule deemed to be the owner of the factory or workshop on the one hand and the district council on the other hand.

(2) Each of the parties to the arbitration may, within fourteen days after the date of the reference, appoint an arbitrator.

(3) No person shall act as arbitrator or umpire who is employed in, or in the management of, or is interested in, the factory or workshop to which the arbitration relates.

(4) The appointment of an arbitrator must be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and the appointment shall not be revoked without the consent of that party.

(5) The death or removal of, or other change in, any of the parties to the arbitration shall not affect the proceedings under this schedule.

(6) If within the said fourteen days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(7) If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act or for seven days refuses or neglects to act, the party by whom that arbitrator was appointed may appoint some other person to act in his place ; and, if he fails to do so within seven days after notice in writin, from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(8) In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred.

(9) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as has been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned.

(10) The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ.

(11) If the umpire dies or becomes incapable of acting before he has made his award or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place,

(12) If the arbitrators refuse or fail, or for seven days after the request of either party neglect, to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the quarter sessions within the jurisdiction of which the factory or workshop is situate.

(13) The decision of every umpire on the matters referred to him shall be final.

(14) If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

(15) Arrangements shall, whenever practicable, be made for the matters in difference being heard at the same time before the arbitrators and the umpire.

(16) The arbitrators and the umpire or any of them may examine the parties and their witnesses on oath and may also consult any counsel, engineer or scientific person whom they think it expedient to consult.

(17) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State and, together with the costs of the arbitration and award, shall be paid by the parties or one of them, according as the award may direct. Such costs may be taxed by a master of the Supreme Court or, in Scotland, by the auditor of the Court of Session, and the taxing officer shall, on the written application of either of the parties, ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the occupier of the factory or workshop may, in the event of nonpayment, be recoverable in the same manner as fines under this Act (*b*).

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SIXTH SCHEDULE.

List of Factories and Workshops (*c*).

Sections 54, 149, 156.

Part I.

Non-Textile Factories.

"Print works."

(1) "Print works," that is to say, any premises in which any persons are employed to print figures, patterns or designs upon any cotton, linen, woollen, worsted or silken yarn or upon any woven or felted fabric not being paper (*d*);

(*b*) It is difficult to see what amount can ever be payable by the Secretary of State or by the occupier, as the only parties to the arbitration are the owner and the district council. The references to the Secretary of State and the occupier appear to have been retained from the Factory and Workshop Act, 1891, *per incuriam*.

(*c*) This list reproduces with certain amendments the list contained in 41 & 42 Vict. c. 16, Schedule IV., as amended by 54 & 55 Vict. c. 75.

(*d*) See *Hardcastle* v. *Jones* (1863), 3 B. & S. 153; 32 L. J. M. C. 49; *Hoyle* v. *Oram* (1862), 12 C. B. (N.S.) 124; 31 L. J. M. C. 213.

"Bleaching and dyeing works." (2) "Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping and making up and packing any yarn or cloth of any material or the dressing or finishing of lace or any one or more of such processes or any process incidental thereto are or is carried on (*e*);

"Earthenware works." (3) "Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing or assisting in finishing earthenware or china of any description, except bricks and tiles not being ornamental tiles;

"Lucifer-match works." (4) "Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer matches or in mixing the chemical materials for making them or in any process incidental to making lucifer matches, except the cutting of the wood;

"Percussion-cap works." (5) "Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps or in mixing or storing the chemical materials for making them or in any process incidental to making percussion caps;

"Cartridge works." (6) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges;

"Paper-staining works." (7) "Paper-staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand or by rollers worked by steam, water or other mechanical power;

"Fustian-cutting works." (8) "Fustian-cutting works," that is to say, any place in which persons work for hire in fustian cutting;

"Blast furnaces." (9) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on;

"Copper-mills." (10) "Copper mills";

"Iron-mills." (11) "Iron mills," that is to say, any mill, forge or other premises in or on which any process is carried on for converting iron into malleable iron, steel or tin plate or for otherwise making or converting steel;

"Foundries." (12) "Foundries," that is to say, iron foundries, copper foundries, brass foundries and other premises or places in which the process of founding or casting any metal is carried on; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work;

"Metal and india-rubber works." (13) "Metal and india-rubber works," that is to say, any premises in which steam, water or other mechanical power is used for moving machinery employed in the manufacture of machinery or in the manufacture of any article of metal not being machinery or in the manufacture of india-rubber or gutta-percha or of articles made wholly or partially of india-rubber or gutta-percha;

"Paper-mills." (14) "Paper mills," that is to say, any premises in which the manufacture of paper is carried on (*f*);

"Glass-works." (15) "Glass works," that is to say, any premises in which the manufacture of glass is carried on;

"Tobacco factories." (16) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on;

"Letter-press printing works." (17) "Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on;

"Bookbinding works." (18) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on;

"Flax scutch mills." (19) "Flax scutch mills";

"Electrical stations." (20) "Electrical stations," that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade or for the lighting of any street, public place or

(*e*) See *Rogers* v. *Manchester Central Packing Co.*, [1898] 1 Q. B. 344; 62 J. P 166.
(*f*) See *Coles* v. *Dickinson* (1864), 16 C. B. (N.S.) 604; 33 L. J. M. C. 235.

public building or of any hotel or of any railway, mine or other industrial undertaking (*g*).

PART II.

Non-Textile Factories and Workshops (*h*).

(21) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on ; "Hat works.

(22) "Rope works," that is to say, any premises being a ropery, rope-walk or rope work in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords or ropes and in which machinery moved by steam, water or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute or tow and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power ; "Rope works.

(23) "Bakehouses," that is to say, any places in which are baked bread, biscuits or confectionery from the baking or selling of which a profit is derived; "Bakehouses."

(24) "Lace warehouses," that is to say, any premises, room or place not included in bleaching and dyeing works as herein-before defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water or other mechanical power ; "Lace warehouses."

(25) "Shipbuilding yards," that is to say, any premises in which any ships, boats or vessels used in navigation are made, finished or repaired (*i*) ; "Shipbuilding yards."

(26) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites or other minerals (*k*) ; "Quarries."

(27) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts. "Pit banks." 50 & 51 Vict. c. 58. 35 & 36 Vict. c. 77.

(28) Dry cleaning, carpet beating and bottle washing (*l*) works.

SEVENTH SCHEDULE.

Section 161.

PART I.

Enactments repealed as from the Commencement of this Act.

Session and Chapter.	Title of Act.	Extent of Repeal.
41 & 42 Vict. c. 16 .	The Factory and Workshop Act, 1878.	The whole Act.
46 & 47 Vict. c. 53 .	The Factory and Workshop Act, 1883.	The whole Act.
52 & 53 Vict. c. 62 .	The Cotton Cloth Factories Act, 1889.	The whole Act.
54 & 55 Vict. c. 75 .	The Factory and Workshop Act, 1891.	The whole Act except sections eight, nine, ten and twelve, and the First Schedule.

(*g*) This is an addition to the old list of non-textile factories. A workhouse is a public building within the meaning of this clause, *Mile End Old Town Guardians* v. *Hoare*, [1903] 2 K. B. 483 ; 67 J. P. 395.

(*h*) Amended by the inclusion of laundries under s. 1 of the Factory and Workshop Act, 1907, *post*, p. 2079.

(*i*) See *Palmer's Shipbuilding and Iron Co.* v. *Chaytor* (1869), L. R. 4 Q. B. 209.

(*k*) See *Kent* v. *Astley* (1870), L. R. 5 Q. B. 19 ; *Redgrave* v. *Lee* (1874), L. R. 9 Q. B. 363.

(*l*) See *Law* v. *Graham, Hoare* v. *Truman, Hanbury and Buxton, Ltd.*, *ante*, p. 2014, and *Kavanagh* v. *Caledonian Rail. Co.* (1904), 5 F. 1128 ; *Johnston* v. *Lalonde Brothers and Parham* in the notes to s. 149, *ante*, p. 2014.

SEVENTH SCHEDULE. PART I.—*continued.*

Session and Chapter.	Title of Act.	Extent of Repeal.
58 & 59 Vict. c. 37 .	The Factory and Workshop Act, 1895.	The whole Act except section twelve, sub-section three of section twenty-four, and section twenty-eight.
60 & 61 Vict. c. 58 .	The Cotton Cloth Factories Act, 1897.	The whole Act.
63 & 64 Vict. c. 27 .	The Railway Employment (Prevention of Accidents) Act, 1900.	In sub-section three of section thirteen the words "factory workshop or" wherever they occur, and the words "the occupier of the factory or workshop or."

PART II.

Enactments repealed from a Date to be fixed by Order of the Secretary of State.

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 75 .	The Factory and Workshop Act, 1891.	Sections eight, nine, ten and twelve, and the First Schedule.
58 & 59 Vict. c. 37 .	The Factory and Workshop Act, 1895.	Section twelve. Sub-section three of section twenty-four. Section twenty-eight.

CREMATION ACT, 1902 (*m*).

(2 EDW. 7, c. 8.)

An Act for the regulation of the burning of Human Remains, and to enable Burial Authorities to establish Crematoria. [22nd July 1902.]

Short title.

1. This Act may be cited as the Cremation Act, 1902.

Definitions.

2. In this Act—

The expression "burial authority" (*n*) shall mean any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act;

42 & 43 Vict. c. 31.

The expression "crematorium" shall mean any building fitted with appliances for the purposes of burning human remains, and shall include everything incidental or ancillary thereto.

3. [*Application to Scotland.*]

Burial authority may provide for cremation.

4. The powers of a burial authority to provide (*o*) and maintain burial

(*m*) This Act is inserted as applicable under the P. H. (Interments) A., 1879, *ante*, p. 709. As to the omission of the clause of enactment, see S. L. R. A., 1894, s. 4.

(*n*) This definition is taken from s. 11 of the Burial Act, 1900.

(*o*) This will include power to borrow for the purpose of providing a crematorium.

grounds or cemeteries, or anything essential, ancillary, or incidental thereto, shall be deemed to extend to and include the provision and maintenance of crematoria (*p*) :

Provided that no human remains shall be burned in any such crematorium until the plans and site thereof have been approved by the Local Government Board, and until the crematorium has been certified by the burial authority to the Secretary of State to be complete, built in accordance with such plans, and properly equipped for the purpose of the disposal of human remains by burning (*q*).

5. No crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority (*r*). Site of crematorium.

6. A burial authority may accept a donation of land for the purposes of a crematorium, and a donation of money or other property for enabling them to acquire, construct, or maintain a crematorium. Donations of land.

7. The Secretary of State shall make regulations (*s*) as to the maintenance and inspection of crematoria and prescribing in what cases and under what conditions the burning of any human remains may take place, and directing the disposition or interment of the ashes (*t*), and prescribing the forms of the notices, certificates, and declarations to be given or made before any such burning is permitted to take place, such declarations to be made under and by virtue of the Statutory Declarations Act, 1835, and also regulations as to the registration of such burnings as have taken place. A copy of such regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, or, if not, then within three weeks after the beginning of the next ensuing Session of Parliament; and, after such regulations have lain for forty days before Parliament, then, unless within such forty days an address has been presented by one or other of the Houses praying His Majesty to withhold his assent from such regulations or any part thereof, such regulations shall have the same effect as if they were enacted in this Act (*u*). All statutory provisions (*x*) relating to the destruction and falsification of registers of burials, and the admissibility of extracts therefrom as evidence in courts and otherwise, shall apply to the register of burnings directed by such regula- Regulations as to burning. 5 & 6 Will. 4, c. 62.

(*p*) The effect is to make it necessary to obtain for the provision of a crematorium, or for any expenditure for that purpose, or for the acquisition or appropriation of any land for that purpose, the same sanction that would be required by the local authority in the case of the provision of a burial ground or cemetery.

(*q*) Apart from this provision the burning of human remains may under certain circumstances amount to a public nuisance. See *R.* v. *Price* (1884), 12 Q. B. D. 247. See also *Williams* v. *Williams* (1881), 20 Ch. D. 659; 46 J. P. 726. And it is a misdemeanour to burn a dead body with intent to prevent an inquest (*R.* v. *Stephenson* (1884), 13 Q. B. D. 331; 49 J. P. 486).

(*r*) See s. 10 of the Cemeteries Clauses Act, 1847, *ante*, p. 1442, and notes thereto.

(*s*) Regulations have been made accordingly dated the 31st March, 1903. See *post*, p. 2253. Breach of these regulations is punishable under s. 8, *infra*.

(*t*) Such interment of ashes is not a burial within the prohibitions against burial in a church under the Church Building Act, 1818, the P. H. Acts, or the Burial Act, 1853, s. 3, and therefore a faculty may issue for allowing such interment in a church (*Re Kerr*, [1894] P. 284). There is nothing in rule 16 of the Regulations of the 31st March, 1903, to prevent such interment.

(*u*) Consequently no question can arise as to whether any such regulations are *ultra vires*. See *Institute of Patent Agents* v. *Lockwood*, [1894] A. C. 347.

(*x*) See s. 15 of the Burial Act, 1857, ss. 36 and 37 of the Forgery Act, 1861, as amended by the Forgery Act, 1913.

54 & 55 Vict. c. 39.

tions to be kept, and the Stamp Act, 1891 (*y*), shall apply to a register under this Act as if it were a register of burials.

Penalties for breach of regulations, &c.

8.—(1) Every person who shall contravene any such regulation as aforesaid, or shall knowingly carry out or procure or take part in the burning of any human remains except in accordance with such regulations and the provisions of this Act, shall (in addition to any liability or penalty which he may otherwise incur) (*z*) be liable on summary conviction to a penalty not exceeding fifty pounds. Provided that any person aggrieved by any conviction may appeal therefrom to quarter sessions (*a*).

(2) Every person who shall wilfully make any false ***declaration or*** (*b*) representation, or sign, or utter any false certificate, with a view to procuring the burning of any human remains, shall (in addition to any penalty or liability which he may otherwise incur) (*c*) be liable to imprisonment with or without hard labour not exceeding two years.

(3) Every person who with intent to conceal the commission or impede the prosecution of any offence (*d*), procures or attempts to procure the cremation of any body, or with such intent makes any declaration or gives any certificate under this Act, shall be liable to (*e*) conviction on indictment to penal servitude for a term not exceeding five years.

Fees.

9. The burial authority may demand payment of any such charges or fees for the burning of human remains in any crematorium provided by them as may be authorised by any table approved by the Local Government Board, and such charges or fees, and any other expenses properly incurred in or in connection with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of the deceased (*f*).

(*y*) See ss. 1, 64, and Schedule I. of that Act, which impose a stamp duty of one penny on every certified copy from any register of burials subject to certain exemptions.

(*z*) This refers to the liability to conviction on indictment for a misdemeanour. See *R.* v. *Price* and *R.* v. *Stephenson* cited in the note to s. 4, *supra*.

(*a*) In accordance with the provisions of s. 31 of the S. J. A., 1879, set out in the notes to s. 269 of the P. H. A., 1875, *ante*, p. 595.

(*b*) Repealed by Perjury Act, 1911.

(*c*) See note (*x*) to s. 7, as to falsification of registers.

(*d*) How does such a person where the "offence" is a felony differ from an accessory after the fact? In such a case is he punishable still as an accessory after the fact or only under this statute? Is a wife punishable under this statute where she would not be punishable as an accessory after the fact? Compare the history of the law with regard to the punishment of the receiver of stolen goods.

(*e*) *Sic.* According to the common form "to" should be "on."

(*f*) This section appears to be of general application and to enable the burial authority to enforce payment against any person against whom they might enforce payment of charges or fees under s. 34 of the Burial Act, 1852.

As to the liability of executors for funeral expenses, see *Ambrose* v. *Kerrison* (1851), 10 C. B. 776; 20 L. J. C. P. 135; *Brice* v. *Wilson* (1834), 3 N. & M. 512; 3 L. J. K. B. 93; *Rogers* v. *Price*, 3 Y. & J. 28; *Tugwell* v. *Heyman* (1812), 3 Camp. 298. As to the liability of the deceased's estate see *Green* v. *Salmon* (1838), 8 A. & E. 348; 7 L. J. Q. B. 236; *Newcome* v. *Beloe* (1865), L. R. 1 P. & D. 314. As to the liability of a husband for his wife's funeral expenses, see *Bertie* v. *Lord Chesterfield* (1723), 9 Mod. 31; *Jenkins* v. *Tucker* (1788), 1 H. Bl. 91; *Ambrose* v. *Kerrison*, *supra*; *Bradshaw* v. *Beard* (1862), 12 C. B. (N.S.) 344; 31 L. J. C. P. 273; *Re M'Myn, Lightbound* v. *M'Myn* (1886), 33 Ch. D. 575. As to the liability of a wife for her husband's funeral expenses, see *Chapple* v. *Cooper* (1838), 13 M. & W. 252; 13 L. J. Ex. 286; *Gregory* v. *Lockyer* (1821), 6 Madd. 90; 22 R. R. 246; *Williter* v. *Dobie* (1855), 2 Kay & J. 647; 4 W. R. 669. As to the liability of a parent for the funeral expenses of his child, see *R.* v. *Vann* (1851), 2 Den. C. C. 325; 21 L. J. M. C. 39; and the non-liability of a child for a parent, *Chapple* v. *Cooper*, *supra*. As to the liability of a householder for an inmate, *R.* v. *Stewart* (1841), 12 A. & E. 773; 10 L. J. M. C. 40. See also as to paupers s. 21 of the Poor Law Amendment Act, 1844, and ss. 16 and 17 of the Poor Law Amendment Act, 1849; as to persons who have died of infectious disease, s. 142 of the P. H. A., 1875, *ante*, p. 248, s. 8 of the Infectious Disease Prevention Act, 1890, *ante*, p. 812, and in London, s. 89 of the P. H. (London) A., 1891.

10. Nothing in this Act shall interfere with the jurisdiction of any coroner under the Coroners Act, 1887, or any Act amending the same, and nothing in this Act shall authorise the burial authority or any person to create or permit a nuisance (*g*). Saving for coroners. 50 & 51 Vict. c. 71.

11. The incumbent of any ecclesiastical parish shall not, with respect to his parishioners or persons dying in his parish, be under any obligation to perform a funeral service before, at, or after the cremation of their remains, within the ground of a burial authority, but, upon his refusal so to do, any clerk in Holy Orders of the Established Church not being prohibited under ecclesiastical censure, may, with the permission of the bishop and at the request of the executor of the deceased person, or of the burial authority, or other person having charge of the cremation or interment of the cremated remains, perform such service within such ground (*h*). Incumbent not to be obliged to perform burial service.

12. In any table of fees respecting burials to be made or approved by the Secretary of State (*i*), a fee may be fixed in respect of a burial service before, at, or after cremation, and if no fee is fixed, the fee, if any, fixed in respect of a burial service shall apply. Fees may be fixed.

13. Sections fifty-two and fifty-seven of the Cemeteries Clauses Act, 1847 (*k*), and any similar provisions in any local and personal Act authorising the making of a cemetery, shall apply to the disposition or interment of the ashes of a cremated body as if it were the burial of a body. Application of 10 & 11 Vict. c. 65, ss. 52 and 57.

14. As from the date at which regulations under this Act come into force, any provisions of any local and personal Act for the like purpose as this Act, and any byelaws or regulations made thereunder, shall, so far as they relate to that purpose, cease to be in operation. Repeal of local Acts.

15. [*Commencement of Act, April 1st,* 1903.]

16. This Act shall not apply to Ireland. Extent of Act.

As to dead bodies cast up by the sea or in tidal or navigable waters, 48 Geo. 3, c. 75, and 49 Vict. c. 20; and as to seamen, s. 34 of the Merchant Shipping Act, 1906, and *Anderson* v. *Rayner*, [1903] 1 K. B. 589, decided under the now repealed s. 207 of the Merchant Shipping Act, 1894.

(*g*) See *R.* v. *Price* and *R.* v. *Stephenson*, cited in the note to s. 4, *ante*, p. 2023.

(*h*) Apart from this enactment and from s. 6 of the Burial Laws Amendment Act, 1880, a clergyman of the Church of England is bound to read the burial service in the manner and form prescribed by the Book of Common Prayer over the corpse of any person who has been baptised with water in the name of the Holy Trinity if required so to do, though the deceased was never baptised otherwise than by a layman, unless the special ecclesiastical prohibitions with regard to persons excommunicated and that have laid violent hands on themselves apply (*Escott* v. *Mastin* (1842), 4 Moo. P. C. 104). But the ordinary cannot compel an incumbent by ecclesiastical censure to perform the burial service on unconsecrated ground (*Rugg* v. *Kingsmill* (1868), L. R. 2 P. C. 59). Moreover, it is illegal for any one, unless he is lawfully authorised, to read or assist in reading the burial service in consecrated ground over a dead body (*Johnson* v. *Friend* (1860), 6 Jur. (N.S.) 280). And it is a breach of ecclesiastical law on the part of a burial board to permit any person to perform the burial service in the consecrated portion of their burial ground unless such person be authorised by the incumbent to do so, and *à fortiori*, unless he be a person duly qualified (*Wood* v. *Headingley Burial Board*, [1892] 1 Q. B. 713; 56 J. P. 326).

See also s. 7 of the Burial Act, 1900, *ante*, p. 1981.

(*i*) As to fees in respect of services rendered by a minister of religion or sexton, see s. 3 of the Burial Act, 1900, *ante*, p. 1978.

(*k*) These sections have no application to a cemetery provided by a local authority under the P. H. (Interments) A., 1879. See note (*n*), *ante*, p. 1448.

MIDWIVES ACT, 1902.

(2 EDW. 7, c. 17.)

An Act to secure the better training of Midwives and to regulate their practice (*l*). [31st July 1902.]

Certification.

1.—(1) From and after the first day of April one thousand nine hundred and five, any woman who not being certified (*m*) under this Act shall take or use the name or title of midwife (either alone or in combination with any other word or words), or any name, title, addition, or description implying that she is certified under this Act, or is a person specially qualified to practise midwifery, or is recognised by law as a midwife (*n*), shall be liable on summary conviction to a fine not exceeding five pounds (*o*).

(2) From and after the first day of April one thousand nine hundred and ten, no woman shall habitually and for gain attend women in childbirth otherwise than under the direction of a qualified medical practitioner unless she be certified under this Act; any woman so acting without being certified under this Act shall be liable on summary conviction to a fine not exceeding ten pounds (*o*), provided this section shall not apply to legally qualified medical practitioners (*p*), or to any one rendering assistance in a case of emergency.

(3) No woman shall be certified under this Act until she has complied with the rules and regulations to be laid down (*q*) in pursuance of this Act.

(4) No woman certified under this Act shall employ an uncertified person as her substitute (*r*).

(5) The certificate under this Act shall not confer upon any woman any right or title to be registered under the Medical Acts (*s*) or to assume any name, title, or designation implying that she is by law recognised as a medical practitioner, or that she is authorised to grant any medical certificate (*t*), or

(*l*) Reference may be made to Circulars of the L. G. B. dated July 29th, 1907, and February 18th, 1910, as to (*inter alia*) payment to doctors called in by midwives in cases of emergency.

(*m*) The absence of the name of the defendant from the midwives' roll under s. 6, *post*, p. 2028, is by s. 7 *primâ facie* evidence that she is not certified. *Cf.* s. 27 of the Medical Act, 1858, s. 29 of the Dentists Act, 1878, and s. 9 of the Veterinary Surgeons Act, 1881.

(*n*) *Cf.* s. 3 of the Dentists Act, 1878, s. 1 of the Pharmacy Act, 1868, and s. 40 of the Medical Act, 1858. Note that the Act contains no provision as to the meaning of "title, addition, or description" similar to that contained in s. 26 of the Medical Act, 1886. *Mens rea* is not a necessary part of the offence, as in the case of an offence against s. 40 of the Medical Act, 1858, as to which see *Hunter* v. *Clare*, [1899] 1 Q. B. 635; 63 J. P. 308; or of an offence against s. 3 of the Dentists Act, 1878. In this respect s. 1 of the Pharmacy Act, 1868, and s. 16 of the Veterinary Surgeons Act, 1881, resemble the text. The title etc., need not include either the word "certificated" or the word "midwife" so long as it implies special qualifications to practise midwifery.

(*o*) As to prosecutions, see s. 13, *post*, and as to right of appeal, see s. 14, *post*.

(*p*) See also s. 16, *post*.

(*q*) By the Central Midwives Board under s. 3, *infra*, see Orders in Council dated August 12th, 1903, and April 24th, 1907, confirming rules.

(*r*) An unregistered assistant of a registered chemist who sells poison in the absence of and on behalf of such chemist is liable to a penalty under s. 1 of the Pharmacy Act, 1868.

The word "employ" as used in this sub-section is not confined to employment for payment. The certified midwife contravening this provision will be liable to indictment as for a misdemeanour in contravening an Act of Parliament, but not to summary proceedings. She might also be removed from the midwives' roll under s. 3 V., *infra* (*Re Feldmann* (1907), 71 J. P. 269; 97 L. T. 548).

(*s*) See s. 40 of the Medical Act, 1858.

(*t*) See s. 28 of the Medical Act, 1858.

any certificate of death or of still-birth (*u*), or to undertake the charge of cases of abnormality or disease in connection with parturition.

2. Any woman who, within two years from the date of this Act coming into operation, claims to be certified under this Act, shall be so certified provided she holds a certificate in midwifery from the Royal College of Physicians of Ireland, or from the Obstetrical Society of London, or the Coombe Lying-in Hospital and Guinness's Dispensary, or the Rotunda Hospital for the Relief of the Poor Lying-in Women of Dublin, or such other certificate as may be approved by the Central Midwives Board, or produces evidence, satisfactory to the Board, that at the passing of this Act, she had been for at least one year in *bonâ fide* practice as a midwife, and that she bears a good character. Provision for existing midwives.

3. On the passing of this Act the Lord President of the Council shall take steps to secure the formation of a Central Midwives Board (*x*), which shall consist of— Constitution and duties of the Central Midwives Board.

(1) Four registered medical practitioners, one to be appointed by the Royal College of Physicians of London, one by the Royal College of Surgeons of England, one by the Society of Apothecaries, and one by the Incorporated Midwives Institute ; and

(2) Two persons (one of whom shall be a woman) to be appointed for terms of three years by the Lord President of the Council ; and

(3) One person to be appointed for a term of three years by the Association of County Councils, one person to be appointed for a term of three years by the Queen Victoria's Jubilee Institute for Nurses, and one person to be appointed for a term of three years by the Royal British Nurses Association.

After two years from the commencement of this Act, the members appointed under sub-section (1) shall retire, but shall be eligible for reappointment annually. Any vacancy occurring by resignation or death shall be filled up in the case of a member appointed under sub-sections (1) and (3) by the body which appointed such person, and in the case of a member appointed under sub-section (2) by the Lord President of the Council ; members appointed under sub-sections (2) and (3) shall, on the termination of the period for which they have been appointed, be eligible for re-appointment for a like period.

The duties and powers of the Board shall be as follows :—

I. To frame rules (*y*)—

(a) regulating their own proceedings ;

(b) regulating the issue of certificates and the conditions of admission to the roll of midwives ;

(c) regulating the course of training and the conduct of examinations, and the remuneration of the examiners ;

(d) regulating the admission to the roll of women already in practice as midwives at the passing of this Act ;

(e) regulating, supervising, and restricting within due limits the practice of midwives ;

(f) deciding the conditions under which midwives may be suspended from practice ;

(*u*) As to the punishment of persons forging death certificates, etc., see s. 40 of the Births and Deaths Registration Act, 1874, as amended by the Forgery Act, 1913.

(*x*) The Board was accordingly constituted under this section, and notice thereof duly given in the London Gazette, November 25th, 1902.

(*y*) See rules approved by Orders in Council dated August 12th, 1903 (1 L. G. R., Part III., p. 342), and April 24th, 1907 (5 L. G. R., Part III., p. 185).

(g) defining the particulars required to be given in any notice under section ten of this Act;

II. To appoint examiners;

III. To decide upon the places where, and the times when, examinations shall be held;

IV. To publish annually a roll of midwives (*z*) who have been duly certified under this Act;

V. To decide upon the removal from the roll of the name of any midwife for disobeying the rules and regulations from time to time laid down under this Act by the Central Midwives Board, or for other misconduct (*a*), and also to decide upon the restoration (*b*) to the roll of the name of any midwife so removed;

VI. To issue and cancel certificates.

And generally to do any other act or duty which may be necessary for the due and proper carrying out of the provisions of this Act.

Rules framed under this section shall be valid only if approved by the Privy Council: and the Privy Council, before approving any such rules, shall take into consideration any representations which the General Medical Council (*c*) may make with respect thereto.

Appeal from decision of Midwives Board.

4. Any woman thinking herself aggrieved by any decision of the Central Midwives Board removing her name from the roll of midwives may appeal (*d*) therefrom to the High Court of Justice within three months after the notification of such decision to her; but no further appeal shall be allowed.

Fees and expenses.

5. There shall be payable by every woman presenting herself for examination or certificate such fee as the Central Midwives Board may, with the approval of the Privy Council, from time to time determine, such fee not to exceed the sum of one guinea. All such fees paid by midwives in practice at the passing of this Act and by candidates for examination shall be paid to the Central Midwives Board. The said Board shall devote such fees to the payment of expenses connected with the examination and certificate, and to the general expenses of the Board. The Board shall, as soon as practicable after the thirty-first day of December in each year, publish a financial statement made up to that date, and showing the receipts and expenditure, including liabilities of the Board during the year, which statement shall be certified as correct by an accountant who shall be a member either of the Institute of Chartered Accountants or of the Incorporated Society of Accountants. The Board shall submit a copy of such statement to the Privy Council, and if the statement shows any balance against the Board and such balance is approved by the Privy Council, the Board may apportion such balance between the councils of the several counties and county boroughs in proportion to the number of midwives who have given notice during the year of their intention to practise in those areas respectively, and may recover from the councils the sum so apportioned (*e*).

Midwives roll.

6. There shall be a roll of midwives containing—

(1) The names of those midwives who have been certified under section two of this Act.

(*z*) See s. 6, *post*.

(*a*) This would apparently justify removal for the employment of an uncertified substitute in contravention of s. 1 (4), *ante*. Misconduct is not limited to misconduct in relation to her duties as a midwife. It might include any offence against the criminal law. *Cf. Re Weare*, [1893] 2 Q. B. 439; 58 J. P. 6.

(*b*) *Cf* s. 14 of the Dentists Act, 1878.

(*c*) Constituted under the Medical Acts, 1858 and 1886.

(*d*) See Rules of Supreme Court, O. 59, rr. 18 and 19, and *Re Feldmann*, *ante*, p. 2026.

(*e*) As to payment of expenses of county and county borough councils, see s. 15, *post*, p. 2031.

(2) The names of all other midwives who have been certified under this Act.

The entry on the roll shall in every case indicate the conditions in virtue of which the certificate was granted.

7. The Central Midwives Board shall, with the previous sanction of the Privy Council, appoint a secretary and such other officers as may be required, and every person so appointed shall be paid such salary as the Privy Council may approve, and shall be removable at the pleasure of the Board. The secretary shall be charged with the custody of the roll. Appointment of secretary and supplemental provision as to certificate.

A copy of the roll of midwives purporting to be printed by the authority of the Board or to be signed by the secretary to the Board, shall be evidence in all Courts that the women therein specified are certified under this Act; and the absence of the name of any woman from such copy shall be evidence, until the contrary be made to appear, that such woman is not certified under this Act: Provided always, that in the case of any woman whose name does not appear in such copy, a certificate under the hand of the secretary of the entry of the name of such woman on the roll shall be evidence that such woman is certified under this Act.

8. Every council of a county or county borough throughout England and Wales shall, on the commencement of this Act, be the local supervising authority over midwives within the area of the said county or county borough. It shall be the duty of the local supervising authority— Local supervision of midwives.

(1) To exercise general supervision over all midwives practising within their area in accordance with the rules to be laid down under this Act.

(2) To investigate charges of malpractice, negligence, or misconduct, on the part of any midwife practising within their area, and should a *primâ facie* case be established, to report the same to the Central Midwives Board.

(3) To suspend any midwife from practice, in accordance with the rules under this Act (*f*), if such suspension appears necessary in order to prevent the spread of infection.

(4) To report at once to the said Board the name of any midwife practising in their area convicted of any offence (*g*).

(5) During the month of January of each year to supply the secretary of the Central Midwives Board with the names and addresses of all midwives who, during the preceding year, have notified their intention to practise within their area, and to keep a current copy of the roll of midwives, accessible at all reasonable times for public inspection.

(6) To report at once to the Central Midwives Board the death of any midwife or any change in the name or address of any midwife in their area, so that the necessary alteration may be made in the roll.

(7) To give due notice of the effect of the Act, so far as practicable, to persons at present using the title of midwife.

The local supervising authority may delegate, with or without any restrictions or conditions as they may think fit, any powers or duties conferred or imposed upon them by or in pursuance of this Act, to a committee appointed by them, and consisting either wholly or partly of members of the council, and the provisions of sub-sections one and two of section eighty-

(*f*) See the Rules dated April 24th, 1907, 5 L. G. R. 185.

(*g*) This seems to include any offence though unconnected with the duties of a midwife as such. *Cf.* note (*a*) to s. 3 V., *ante*, p. 2028.

two of the Local Government Act, 1888 (*h*), shall apply to every committee appointed under this section and to every council appointing the same, and women shall be eligible to serve on any such committees.

Delegation of powers to district councils.

9. A county council may delegate, with or without any restrictions or conditions as they may think fit, any powers or duties conferred or imposed upon them by or in pursuance of this Act, to any district council within the area of the county, and the powers and duties so delegated may be exercised by a committee appointed by such district council and consisting either wholly or partly of members of the district council, and women shall be eligible to serve on any such committee. Any expenses incurred by a district council in the execution of any powers or duties so delegated shall, to an amount not exceeding such sum as may be prescribed by the county council, be repaid to such district council as a debt by the county council, and any excess above the sum so prescribed shall be borne by the district council as part of their ordinary expenses (*i*).

The provisions of this section shall apply to the administrative county of London in like manner as if each metropolitan borough were a county district and the borough council were the district council of that district.

Notification of practice

10. Every woman certified under this Act shall, before holding herself out as a practising midwife or commencing to practise as a midwife in any area, give notice in writing of her intention so to do to the local supervising authority or to the body to whom for the time being the powers and duties of the local supervising authority shall have been delegated under this Act, and shall give a like notice in the month of January in every year thereafter during which she continues to practise in such area.

Such notice shall be given to the local supervising authority of the area within which such woman usually resides or carries on her practice, and the like notice shall be given to every other local supervising authority or delegated body within whose area such woman at any time practises or acts as a midwife, within forty-eight hours at the latest after she commences so to practise or act.

Every such notice shall contain such particulars as may be required by the rules under this Act (*k*) to secure the identification of the person giving it; and if any woman omits to give the said notices or any of them, or knowingly or wilfully makes or causes or procures any other person to make any false statement in any such notice she shall on summary conviction (*l*) be liable to a fine not exceeding five pounds.

11. [*Penalty for obtaining a certificate by false representation.*] (*m*)

Penalty for wilful falsification of the roll.

12. Any person wilfully making or causing to be made any falsification in any matter relating to the roll of midwives shall be guilty of a misdemeanour (*n*), and shall be liable to be imprisoned with or without hard labour, for any term not exceeding twelve months.

(*h*) These sub-sections provide for the quorum, proceedings, and area of jurisdiction of committees, their place of meeting, the casting vote of the chairman, their reports to the council, and its approval of their actions.

(*i*) That is to say, if an urban district council out of the general district fund under s. 209 of the P. H. A., 1875, *ante*, p. 471, and if a rural district council out of the common fund under s. 229 of that Act, *ante*, p. 509. But if the power of prosecuting as supervising authority is delegated under this section, the special provisions of s. 13 with regard to the expenses of prosecutions would seem to apply, notwithstanding this section.

(*k*) See Form XII. in the Appendix to the Rules.

(*l*) The local supervising authority may prosecute under s. 13, *infra*.

(*m*) See now the Perjury Act, 1911, which repealed this section.

(*n*) On indictment. Any member of the public may prosecute. See *R.* v. *Steuart*,

13. Any offences under this Act punishable on summary conviction may be prosecuted by the local supervising authority (*o*). Prosecution of offences.

The expenses of any such prosecution shall be defrayed by the council of the county or county borough in which the prosecution takes place.

14. Where any woman deems herself aggrieved (*p*) by any determination of any court of summary jurisdiction under this Act, such woman may appeal therefrom to the court of quarter sessions (*q*). Appeal.

15. Any expenses under this Act payable by the council of a county or county borough (*r*) shall be defrayed out of the county fund or out of the borough fund or borough rate, as the case may be. Expenses of local supervising authority.

16. Nothing in this Act respecting midwives shall apply to legally qualified medical practitioners. Act not to apply to medical practitioners.

17. This Act shall not extend to Scotland or Ireland. Extent of Act and action by English Branch Council.

The General Medical Council shall act by the English Branch Council which for all purposes of this Act shall occupy the place of the General Medical Council (*s*).

18. In this Act— Definitions.

The term "midwife" means a woman who is certified under this Act unless the context otherwise requires.

"Central Midwives Board" means the Board constituted under this Act for the purpose of carrying out the provisions of this Act.

19. This Act may be cited as the Midwives Act, 1902. It shall, except as otherwise provided by this Act, come into operation on the first day of April one thousand nine hundred and three. Short title and commencement.

BOROUGH FUNDS ACT, 1903 (*t*).

(3 Edw. 7, c. 14.)

An Act to amend the Borough Funds Act, 1872. [11th August 1903.]

1. No expense in relation to the promotion of a Bill in Parliament shall be charged by the council of a borough or urban district under theBorough Funds Act, 1872, unless the requirements contained in the First Schedule to this Act have been observed (*u*).

[1896] 1 Q. B. 300 ; 60 J. P. 356 ; *Kenealy* v. *O'Keeffe*, [1901] 2 I. R. 39; *Connor* v. *Butler*, [1902] 2 I. R. 569 ; *Allman* v. *Hardcastle* (1903), 67 J. P. 440 ; 89 L. T. 553.

(*o*) As to the local supervising authority, see s. 8, *ante*, p. 2029.

(*p*) This does not include any other woman than the woman who was convicted by the court of summary jurisdiction. See cases collected in the notes to s. 253 of the P. H. A., 1875, *ante*, p. 558.

(*q*) For procedure, see s. 31 of the S. J. A., 1879.

(*r*) See s. 9, *ante*, p. 2030, and s. 13.

(*s*) See s. 6 of the Medical Act, 1858.

(*t*) See the Borough Funds Act, 1872, *ante*, p. 1566. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894. This Act makes various changes in the procedure attendant upon the promotion of or opposition to a Bill in Parliament on the part of the council of a borough or other urban district.

(*u*) This section it will be noted is limited to the councils of boroughs and urban districts. It does not extend to county councils, who may therefore promote Bills without the consent of the electors, and subject only to the approval of the L. G. B. under s. 4 of the Act of 1872, as affected by s. 8 of this Act. See note (*i*), *ante*, p. 1567.

This section is limited further to expenses in relation to promoting a Bill. It is not necessary to obtain any consent of owners and ratepayers for opposing, see sect. 7 (1),

Withdrawal of Bill, or part, in case of adverse poll.

2.—(1) If the result of a poll under this Act, or the decision of a meeting of electors when final, is against the promotion of the Bill, or of a part or parts, or clause or clauses, of the Bill, the council shall forthwith take all necessary steps to withdraw the Bill or the part or parts, or clause or clauses (as the case may be), against which the poll has resulted or the decision of the meeting has been given (*x*).

(2) In the case of equality of votes on any question of promotion, that question shall be deemed to be decided against the promotion (*y*).

Expense of promoting Bills.

3. Where a Bill, or a part or parts, or clause or clauses, of a Bill, is or are withdrawn, no further expense shall be incurred by the council, or mayor or chairman, in or about the promotion of the Bill, or part or parts, or clause or clauses, so withdrawn, but, subject as aforesaid, all costs, charges, and expenses incurred by the council, or mayor or chairman, in or as incidental to the preparation and promotion of the Bill up to and inclusive of its deposit in Parliament and withdrawal (if withdrawal), and in or as incidental to the holding of a meeting or the taking of a poll under this Act, shall, when taxed by a taxing officer of one of the Houses of Parliament (*z*), and allowed under the Borough Funds Act, 1872 (*a*), be charged on and payable out of such one or more of the public funds or rates under the control of the council (and, if more than one, then in such proportions) as the council, having regard to the nature and objects of the Bill, may determine to be just and proper.

35 & 36 Vict. c. 91.

Saving for special Acts.

4. Nothing in this Act shall extend or be construed to alter or affect any special provision in any local Act for the payment of the costs, charges, and expenses in relation to the promotion by any council of a Bill in Parliament, or to take away or diminish any rights or powers now possessed or enjoyed by any council, or which are or shall be vested in or exerciseable by the inhabitants of the district of any council under any general or special Act, but the council may, if they think fit, adopt with respect to the promotion of any Bill the procedure provided by this Act in lieu of that provided by their local Act (*b*).

Offences in relation to polls (*c*).

5.—(1) Any person who at, or for the purposes of, a poll under this Act—

(i.) fraudulently signs or forges any signature to a requisition of electors under this Act; or

(ii.) applies for a voting paper in the name of some other person, whether

post, but the approval of the L. G. B. must be obtained. The onus of showing statutory authority for payments made by a public body lies on the body making such payments (*R.* v. *Newell*, [1911] 2 I. R. 573).

(*x*) As to putting the resolutions to a meeting so as to deal with parts or clauses separately, see clause 6 of the First Schedule.

The promoting council may withdraw the Bill or any part or parts or clause or clauses at any time before a poll where a poll is demanded at the meeting. Provision in such case for notice to the returning officer, and for notice that no poll will be taken, is contained in Articles 5 and 6 of the Borough Funds Acts (Polls) Order, 1903, set out in Appendix II., *post*, p. 2194.

(*y*) The president of the meeting has no casting or second vote, nor has the returning officer in case of a poll. But the sub-section has no application to the decision of questions of promotion in debate at the council, which is governed by the standing orders of the council itself.

(*z*) See the House of Commons Costs Taxation Act, 1847; the House of Lords Costs Taxation Act, 1849; and the Parliamentary Costs Act, 1865; House of Commons Costs Taxation Act, 1879.

(*a*) As to allowance see s. 6 of the Borough Funds Act, 1872, *ante*, p. 1569.

(*b*) See also saving for special Acts in s. 8 of the Borough Funds Act, 1872, *ante*, p. 1569.

(*c*) Compare ss. 3 and 24 of the Ballot Act, 1872.

that name be the name of a person living or dead, or of a fictitious person (*d*); or

(iii.) having voted once, applies for a second voting paper in his own name; or

(iv.) forges or counterfeits, or fraudulently defaces or fraudulently destroys any voting paper; or

(v.) without due authority supplies a voting paper to any person; or

(vi.) fraudulently puts into any box or other receptacle any paper other than a voting paper supplied to him for the purpose; or

(vii.) fraudulently takes out of the polling station any voting paper; or

(viii.) without due authority destroys, takes, opens, or otherwise interferes with any box or other receptacle for voting papers or any voting papers then in use; or

(ix.) causes any disturbance or disorder in or near any polling station (*e*);

shall be liable on summary conviction to a fine not exceeding twenty pounds (*f*).

(2) An attempt (*g*) to commit any offence specified in this section shall be punishable in the manner in which the offence is punishable.

6. The failure to comply with the requirements of this Act as to notices or the time within which anything is to be done, or the procedure at a meeting of electors or the mode of taking the poll, shall not render invalid the charge under the Borough Funds Act, 1872, or this Act of any expenses in relation to the promotion of a Bill, if the provisions of this Act have been substantially complied with and the failure has not affected the result of the proceedings under this Act (*h*). Non-compliance with procedure

7.—(1) The provision contained in section 4 of the Borough Funds Act, 1872 (*i*), that no expense in opposing a Bill in Parliament shall be charged unless the opposition has had the consent of the owners and ratepayers of the district, shall cease to apply. Expenses of opposing Bills

(2) In section 1 of the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (*k*), references to the Borough Funds Act shall be construed and have effect as references to the Borough Funds Act, 1872, as amended by this Act. 54 Vict. c. 12.

8. The powers conferred upon the Secretary of State by the Borough Funds Act, 1872, or by virtue of any extension or application of that Act, shall be transferred to and exercised by the Local Government Board (*l*). Transfer to Local Government Board of certain powers of Secretary of State.

(*d*) If a man applies for a voting paper in a name which is not his own name, but is the name under which he is registered, and which was intended to designate him and no other person, he commits no offence (*R.* v. *Fox* (1887), 16 Cox C. C. 166). So also if he honestly believes he is entitled to vote (*Gloucester* (1873), 2 O'M. & H. 62; *Athlone* (1880), 3 O'M. & H. 57; *Carrickfergus* (1880), Parl. Pap. 1880, No. 337, sess. 2, p. 14).

No power of summary arrest is given as in the case of personation at elections.

(*e*) The party may also be given into custody by the presiding officer (*Spilsbury* v. *Micklethwaite* (1808), 1 Taunt. 146).

(*f*) There is no right of appeal to quarter sessions, although the court of summary jurisdiction may state a case for the opinion of the High Court.

(*g*) Aiding and abetting an offence against sub-s. (1) (ii) is not specifically made an offence as in the case of aiding, etc., personation at an election.

(*h*) Compare s. 13 of the Ballot Act, 1873, and see *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733; 39 J. P. 776; *Drogheda*, 2 O'M. & H. 201; *East Clare*, 4 O'M. & H. 162; *Wilson* v. *Ingham* (1895), 64 L. J. Q. B. 775; 59 J. P. 611.

(*i*) *Ante*, p. 1568.

(*k*) *Ante*, p. 1854.

(*l*) *E.g.* powers of approval of promotion and opposition (s. 4); of authorising examination and allowance of costs (s. 6); and of directing a local inquiry (s. 7), *ante*, pp. 1568, 1569.

Definitions.

9. For the purposes of this Act, the expression "council" includes the council of every borough and of every urban district, the expression "borough" includes a metropolitan borough, and the expression "electors" means the parochial electors for the time being enrolled in the register of parochial electors in force for the parishes in a borough or urban district, and the expression "the mayor or chairman" means the mayor of the borough or the chairman of the urban district council.

Repeals.

10. The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Extent of Act.

11. This Act shall not extend to Scotland or Ireland.

Short title and commencement.

12.—(1) This Act may be cited as the Borough Funds Act, 1903, and the Borough Funds Act, 1872, and this Act may be cited together as the Borough Funds Acts, 1872 and 1903.

(2) [*Commencement of Act, October 1st, 1903.*]

SCHEDULES.

FIRST SCHEDULE.

REGULATIONS FOR MEETING AND POLLING OF ELECTORS.

35 & 36 Vict. c. 91.

1. Where the council of a borough or urban district have resolved, in accordance with the provisions of the Borough Funds Act, 1872, to promote a Bill in Parliament, and the Bill has been deposited, notice shall be given by placards and by advertisement in some local newspaper circulating in the borough or district in two successive weeks stating—

(a) the title of the Bill; and

(b) a brief statement of the objects of the Bill;

(c) that the Bill has been deposited, and the date on which it was first deposited in either House; and

(d) that copies of the Bill may be inspected and purchased at a place within the borough or district specified in the notice, between the hours of ten in the forenoon and five in the afternoon, on every week day for fourteen days after the date of the first advertisement, and that extracts may be taken free of charge; and

(e) That a public meeting of electors will be held on a day named, not being less than fourteen nor more than twenty-eight days after the first advertisement of the notice, for the purpose of considering the question of the promotion of the Bill, and indicating the resolutions which will be submitted to the meeting.

2. The first advertisement under these regulations must be made within seven days from the first deposit of the Bill in either House, and the placards giving notice under these regulations must be posted within the same time.

3. A public meeting of electors shall be held in accordance with the notice, and the mayor or chairman, or, in the event of his being unable or unwilling to preside, any person appointed by the council to perform that duty, shall be president of the meeting; but, if neither the mayor or chairman, nor the person so appointed, is present within ten minutes after the time appointed for the meeting, the meeting shall choose an elector present at the meeting to be president of the meeting.

4. The president of the meeting may, with the consent of the majority of the electors present, adjourn the meeting for not more than seven days.

5. On opening any such meeting the president of the meeting, or a member or officer of the council, shall give such explanation of the Bill with reference to which the meeting is held as he thinks expedient.

6.—(a) The question of the promotion of the Bill shall be put by the president to the meeting either by a single resolution in favour of the promotion of the whole Bill, or by separate resolutions in favour of the promotion of any part or parts or clause or clauses of the Bill, but together covering the promotion of the whole Bill, and the meeting shall decide for or against any such resolution.

(b) The president shall explain to the meeting the resolution or resolutions he proposes to put to the meeting, and the question of the promotion of the Bill shall be put in the manner proposed ;

Provided that, if, before any such resolution is put, the meeting decide to request the president to put separately any resolution or resolutions in favour of the promotion of any part or parts or clause or clauses of the Bill not proposed by him to be put separately, he shall put such further or other resolution or resolutions to the meeting as will, consistently with the provisions of this schedule, give effect to that request.

7. Unless a poll is required in manner provided by this schedule, with respect to any resolution for promotion put to the meeting, the decision of the meeting on that resolution, as declared by the president of the meeting, shall be final.

8. A poll may be required with respect to any such resolution by not less than one hundred electors, or one-twentieth in number of the electors, whichever may be the less, and, if the decision of the meeting on the resolution is against the resolution, by the council.

9. A requisition for a poll by electors must be in writing signed by the persons making it, and must be delivered to the mayor or chairman within seven days after the date of the meeting, or any adjournment thereof.

10. A requisition for a poll by the council must be authorised by a resolution of the council, and a copy of the resolution must be delivered to the mayor or chairman within seven days after the meeting or any adjournment thereof. Provided that, if the regulations governing the meetings of the council do not permit of an ordinary meeting of the council being held within the said seven days, the time for the delivery of a copy of the resolution shall be within three days after the date on which an ordinary meeting of the council can first be held subsequently to the date of the meeting of the electors or any adjournment thereof.

11. The mayor or chairman shall proceed to take the opinion by poll of the electors on the resolution to which any requisition relates, unless a poll is rendered unnecessary by the withdrawal of the requisition for a poll or by a resolution of the council withdrawing the Bill, or the part or parts or clause or clauses to which the resolution with reference to which the poll is required relates.

12. The polls on any number of resolutions may be taken at the same time and by means of the same voting paper.

13. The mayor or chairman shall count, or cause to be counted, the votes given at a poll under this schedule, and shall as soon as practicable declare the result.

14. The decision of the mayor or chairman on any question arising in respect of any voting paper shall be final.

15. Where the mayor or chairman is unable or unwilling to perform any duty or do any act or thing with respect to a poll under this schedule, the council shall appoint some other person to perform the duty or do such act or thing.

16. Subject to the provisions of this schedule the poll shall be taken in accordance with such regulations as may be prescribed by the Local Government Board, and the Local Government Board may prescribe forms for requisitions, voting papers, notices, and other documents under this schedule, and those forms, or forms to the like effect, shall be used (*m*).

(*m*) See the Borough Funds Acts (Polls) Order, 1903, printed in Appendix II., *post*, p 2194.

SECOND SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND.

Session and Chapter.	Short Title.	Extent of Repeal.
35 & 36 Vict. c. 91 .	The Borough Funds Act, 1872.	In section four, the words from "Provided further" to the end of the section. In section five, the words "or one of her Majesty's principal Secretaries of State, as the case may be," and the words "or Secretary of State." In section six, the words "by one of her Majesty's principal Secretaries of State, or" and the words "as the case may be." In section seven, the words "or one of her Majesty's principal Secretaries of State." In section eleven, the words "or the metropolitan area as defined by the Metropolis Management Act, 1855."

EMPLOYMENT OF CHILDREN ACT, 1903 (*n*).

(3 EDW. 7, c. 45.)

An Act to make better provision for regulating the Employment of Children.
[14th August 1903.]

Power to make byelaws for regulating the employment of children.

1. Any local authority (*o*) may make byelaws (*p*)—
(i.) prescribing for all children (*o*), or for boys and girls separately, and with respect to all occupations or to any specified occupation (*q*)—
(a) the age below which employment (*o*) is illegal; and
(b) the hours between which employment (*o*) is illegal; and
(c) the number of daily and weekly hours beyond which employment (*o*) is illegal:
(ii.) prohibiting absolutely (*r*) or permitting, subject to conditions, the employment (*o*) of children (*o*) in any specified occupation.

Power to make byelaws for the regulation of street trading by person under sixteen.

2. Any local authority may make byelaws (*p*) with respect to street trading (*s*) by persons under the age of sixteen (*t*), and may by such byelaws—
(a) prohibit such street trading, except subject to such conditions as to age, sex, or otherwise, as may be specified in the byelaw, or subject to the holding of a licence to trade to be granted by the local authority;
(b) regulate the conditions on which such licences may be granted, suspended, and revoked;
(c) determine the days and hours during which, and the places at which, such street trading may be carried on;

(*n*) The general purpose of the Act is explained in the Home Office Circular, dated November 14th, 1903, which is printed in Appendix II., *post*, p. 2370.
As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894.
(*o*) Defined in s. 13, *post*.
(*p*) Model byelaws have been issued by the Home Office and will be found in Appendix II., *post*, p. 2376. Separate series have been issued under ss. 1, 2, and 3.
(*q*) The Home Office Circular above referred to deals particularly with the question of the advisability of making separate byelaws with respect to separate occupations.
(*r*) The object of this provision is explained in the Home Office Circular.
(*s*) Defined by s. 13, *post*, but not exhaustively.
(*t*) Presumption as to age of child, see s. 17 of the Prevention of Cruelty to Children Act, 1904, *post*, p. 2045.

(d) require such street traders to wear badges ;
(e) regulate generally the conduct of such street traders :

Provided as follows :—

(1) The grant of a licence or the right to trade shall not be made subject to any conditions having reference to the poverty or general bad character of the person applying for a licence or claiming to trade ; (*u*)

(2) The local authority, in making byelaws under this section, shall have special regard to the desirability of preventing the employment of girls under sixteen in streets or public places (*x*).

General restrictions on employment of children.

3.—(1) A child (*y*) shall not be employed (*y*) between the hours of nine in the evening and six in the morning : Provided that any local authority may, by byelaw, vary these hours either generally or for any specified occupation.

(2) A child (*y*) under the age of eleven years shall not be employed in street trading.

(3) No child (*y*) who is employed (*y*) half time under the Factory and Workshop Act, 1901, shall be employed in any other occupation (*a*).

(4) A child (*y*) shall not be employed (*y*) to lift, carry, or move anything so heavy as to be likely to cause injury to the child.

(5) A child (*y*) shall not be employed (*y*) in any occupation likely to be injurious to his life, limb, health, or education, regard being had to his physical condition.

(6) If the local authority (*y*) send to the employer of any child (*y*) a certificate signed by a registered medical practitioner that the lifting, carrying, or moving of any specified weight is likely to cause injury to the child, or that any specified occupation is likely to be injurious to the life, limb, health, or education of the child, the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child.

General provisions as to byelaws.

4.—(1) A byelaw made under this Act shall not have any effect until confirmed by the Secretary of State, and shall not be so confirmed until at least thirty days after the local authority have published it in such manner as the Secretary of State may by general or special order direct (*b*).

(2) The Secretary of State shall, before confirming any byelaw, consider any objections to it which may be addressed to him by persons affected or likely to be affected thereby.

(3) The Secretary of State may, before confirming any byelaw, order that a local inquiry be held with respect to the byelaw or with respect to any objections thereto. The person holding any such inquiry shall receive such remuneration as the Secretary of State may determine, and that remuneration and the expenses of the local inquiry shall be paid by the local authority making the byelaw (*c*).

(*u*) See Home Office Circular above referred to. The Home Secretary appears to consider that this clause includes conditions having reference to the poverty or general bad character of the parents of the young street trader, but the Act does not say so.

The grant of a licence though discretionary should be exercised upon proper principles and not arbitrarily (see *Sharp* v. *Wakefield* [1891], A. C. 173, at pp. 179, 180 ; 55 J. P. 197).

(*x*) The subject of this proviso is particularly dealt with in the Home Office Circular.

(*y*) Defined in s. 13, *post*, p. 2040. Presumption as to age of child, see s. 17 of the Prevention of Cruelty to Children Act, 1904, *post*, p. 2045.

(*a*) As to half-timers see ss. 68—72, 103 (1) (d) and (4), 137—139, of the Factory and Workshop Act, 1901.

(*b*) See order dated November 11th, 1903 (Stat. R. & O. rev. to December, 1903, vol. VI., tit. Infant, p. 1), in Appendix II., *post*, p. 2378.

(*c*) No power to summon witnesses or take evidence on oath is given for the purposes of the local inquiries referred to in this sub-section.

(4) Byelaws made under this Act may apply either to the whole of the area of the local authority, or to any specified part thereof.

(5) Byelaws made by a county council shall not be of any force or effect within any borough or urban district the council of which is constituted a local authority under this Act (*d*).

Offences and penalties.

5.—(1) If any person employs a child or other person under the age of sixteen in contravention of this Act, or of any byelaw under this Act, he shall be liable on summary conviction (*e*) to a fine not exceeding forty shillings, or, in case of a second or subsequent offence, not exceeding five pounds.

(2) If any parent or guardian (*f*) of a child or other person under the age of sixteen has conduced to the commission of the alleged offence by wilful default, or by habitually neglecting to exercise due care, he shall be liable on summary conviction (*e*) to the like fine.

(3) If any person under the age of sixteen contravenes the provisions of any byelaw as to street trading made under this Act, he shall be liable on summary conviction (*e*) to a fine not exceeding twenty shillings, and in case of a second or subsequent offence, if a child, to be sent to an industrial school (*g*), and, if not a child, to a fine not exceeding five pounds.

(4) In lieu of ordering a child to be sent under this section to an industrial school, a court of summary jurisdiction may order the child to be taken out of the charge or control of the person who actually has the charge or control of the child, and to be committed to the charge and control of some fit person who is willing to undertake the same until such child reaches the age of sixteen years: And the provisions of sections seven and eight of the Prevention of Cruelty to Children Act, 1894, shall, with the necessary modifications, apply to any order for the disposal of a child made under this sub-section (*h*).

Offences by agents or workmen and by parents.

6.—(1) Where the offence of taking a child into employment in contravention of this Act (*i*) is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

(2) Where a child is taken into employment in contravention of this Act (*h*) on the production, by or with the privity of the parent, of a false or forged certificate (*k*), or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act (*i*), that parent shall be liable to a penalty not exceeding forty shillings.

(*d*) Sub-section (6), which provided that byelaws under the Prevention of Cruelty to Children Act, 1894, should be made by the same authority and confirmed in the same way as byelaws under this Act, is repealed by s. 33 and the Second Schedule of the Prevention of Cruelty to Children Act, 1904, because ss. 2 and 22 of that Act (*post*, pp. 2042, 2045) now provide for the point.

(*e*) No appeal to Quarter Sessions is given by this or any other Act (*R.* v. *London JJ.*, [1900] 1 Q. B. 438; 64 J. P. 357); but there may be an appeal by case stated under s. 2 of the S. J. A., 1857, and s. 33 of the S. J. A., 1879.

(*f*) Defined by s. 13, *post*, p. 2040.

(*g*) See Part IV. of the Children Act, 1908.

(*h*) The whole of the Prevention of Cruelty to Children Act, 1894, was repealed by s. 33 and the Second Schedule to the Prevention of Cruelty to Children Act, 1904, but the provisions of ss. 7 and 8 of the former Act are reproduced in ss. 7 and 8 of the latter, so that by s. 38 (1) of the Interpretation Act, 1889, references in this proviso to ss. 7 and 8 of the Act of 1894 must now be construed as references to ss. 7 and 8 of the Act of 1904.

Section 7 deals with the maintenance of a child when committed to the custody of any person under the order of the Court, and s. 8 deals with the religious persuasion of the person to whom the child is committed.

(*i*) This would appear to include any contravention of a byelaw made under this Act.

(*k*) The parent would not be relieved by conviction under this sub-section from any penalty he might have incurred for procuring or uttering the certificate knowing it to be false.

(3) Where an employer is charged with any offence under this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the court is satisfied that the employer has used due diligence to comply with the provisions of the Act, and that the other person had committed the offence in question without the employer's knowledge, consent, or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any fine (*l*).

(4) When it is made to appear to the satisfaction of an inspector or other officer charged with the enforcement of this Act, at the time of discovering the offence, that the employer had used all due diligence to enforce compliance with this Act, and also by what person the offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, and in contravention of his order, then the inspector or officer shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer (*m*).

Limitation of time.

7. With respect to summary proceedings for offences and fines under this Act, and any byelaws made thereunder, the information shall be laid within three months after the commission of the offence (*n*).

Power of officer of local authority to enter place of employment.

8. If it appear to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act (*o*) in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time, within forty-eight hours from the date of the order, and examine such place and any person therein touching the employment of any child therein.

Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction (*p*) to a penalty not exceeding twenty pounds.

Employment in factories. 35 & 36 Vict. c. 77. 50 & 51 Vict. c. 58. 1 Edw. 7, c. 22.

9. Byelaws made under this Act shall not apply to any child above twelve employed in pursuance of the Factory and Workshop Act, 1901, or the Metalliferous Mines Regulation Act, 1872, or the Coal Mines Regulation Act, 1887 (*pp*), so far as regards that employment; and in the application of section three to children employed under those Acts the inspectors appointed

(*l*) A vanman in the employment of the respondent employed for his own convenience a child to deliver bread to the respondent's customers during hours forbidden by a byelaw made under s. 3 (1), *ante*. The child was actually employed and his wages paid by the vanman and his engagement formed no part of any arrangement between him and the respondent who had no knowledge that the employment was in any way a breach of the byelaw. The respondent was charged with having unlawfully employed the child during hours prohibited by the byelaw. It was held that the mere fact that the respondent was charged with the offence did not, in the absence of any evidence of a contract of employment of the child during prohibited hours by or on behalf of the respondent, make it incumbent upon him under s. 6 (3), in order to claim exemption from a fine, to charge the vanman as the actual offender, and that as there was no evidence of any unlawful employment of the child by the respondent either directly or by an agent to employ the child on his behalf, no offence by the respondent had been proved (*Robinson* v. *Hill*, [1910] 1 K. B. 94; 73 J. P. 514).

(*m*) As to sub-ss. (1) (3) and (4) compare ss. 140 and 141 of the Factory and Workshop Act, 1901, *ante*, p. 2010, and s. 39 of the Elementary Education Act, 1876.

(*n*) This excludes the application of the six months' limit under s. 11 of the S. J. A., 1848.

(*o*) See note (*i*), *supra*.

(*p*) No appeal to Quarter Sessions is given by this or any other Act (see *R.* v. *London JJ.*, *ante*, p. 2038). There may, however, be an appeal by case stated under s. 2 of the S. J. A., 1857, and s. 33 of the S. J. A., 1879.

(*pp*) See now the Coal Mines Act, 1911, ss. 91—95.

under those Acts shall be substituted for the local authority in respect of such employment.

Saving for industrial and other schools.

10. Nothing in this Act or in any byelaw made thereunder shall apply to the exercise of manual labour by any child under order of detention in a certified industrial reformatory school, or by any child while receiving instruction in manual labour in any school.

11. [*Incorporation and amendment of s.* 3 *of* 57 *&* 58 *Vict. c.* 41 (*q*).]

Expenses of Act in England and Wales.

12. Any expenses incurred by a local authority in England and Wales in carrying into effect the provisions of this Act or any byelaw made thereunder shall be defrayed in the case of a county out of the county fund, and in the case of a borough out of the borough fund or borough rate, and in the case of any other urban district out of any rate or fund applicable for defraying expenses incurred in the execution of the Public Health Acts (*r*) : Provided that a county council shall not raise any sum on account of their expenses under this Act within any borough or urban district the council of which is a local authority under this Act.

Definitions.

13. In this Act—

The expression "child" means a person under the age of fourteen years (*s*) :

The expression "guardian," used in reference to a child, includes any person who is liable to maintain (*t*) or has the actual (*u*) custody of the child :

The expressions "employ" and "employment," used in reference to a child, include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person :

The expression "local authority" means, in the case of the city of London, the mayor, aldermen, and commons of that city in common council assembled, in the case of a municipal borough with a population according to the census of nineteen hundred and one of over ten thousand (*x*), the borough council, and in the case of any other urban district with a population according to the census of nineteen hundred and one of over twenty thousand (*x*), the district council, and elsewhere the county council :

The expression "street trading" includes the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoeblacking, and any other like occupation carried on in streets or public places.

14. 15. 16.—[*Application to Scotland and Ireland.*]

17.—[*Commencement of Act, January* 1*st*, 1904.]

Short title.

18. This Act may be cited as the Employment of Children Act, 1903.

(*q*) Section 11 is wholly repealed by s. 33 and the Second Schedule of the Prevention of Cruelty to Children Act, 1904, because s. 3 of the Prevention of Cruelty to Children Act, 1894, as amended by s. 11 of this Act, is re-enacted by s. 3 of the Act of 1904.

(*r*) See ss. 207, 229 *et seq.* of the P. H. A., 1875, *ante*, pp. 468, 509.

(*s*) Presumption as to age of child, see s. 17 of the Prevention of Cruelty to Children Act, 1904, *post*, p. 2045.

(*t*) That is, by law liable to maintain.

(*u*) Actual custody appears to be contrasted with legal custody. So long as there is actual custody it does not matter that there is no legal right to the custody. Compare provisions of s. 23 of the Prevention of Cruelty to Children Act, 1904, *post*, p. 2045. As to the meaning of the word "custody," see *R.* v. *Connor*, [1908] 2 K. B. 26; *Liverpool Society for the Prevention of Cruelty to Children* v. *Jones* (1914), 78 J. P. N. 293.

(*x*) These are the limits which apply also with regard to the local education authority for the purpose of Part III. of the Education Act, 1902.

REVENUE ACT, 1903.

(3 EDW. 7, c. 46.)

An Act to make certain amendments of the Law relating to Customs and Inland Revenue, and of the Law relating to the powers and duties of the National Debt Commissioners. [14th August 1903.]

PART III.

TAXES.

11 (*y*).—(1) Where a house, so far as it is used as a dwelling-house, is used for the sole purpose of providing separate dwellings,— Inhabited house duty on houses let in tenements or flats.

(a) The value of any dwelling in the house which is of an annual value below twenty pounds shall be excluded from the annual value of the house for the purposes of inhabited house duty; and

(b) The rate of inhabited house duty in respect of any dwelling in the house of an annual value of twenty pounds but not exceeding forty pounds shall be reduced to threepence; and

(c) The rate of inhabited house duty in respect of any dwelling in the house of an annual value exceeding forty pounds but not exceeding sixty pounds shall be reduced to sixpence.

(2) The provisions of this section as respects dwellings of an annual value not exceeding forty pounds shall not take effect with regard to any such dwelling unless such a certificate as to accommodation and sanitary condition is produced to the General Commissioners as defined by section five of the Taxes Management Act, 1880, as is mentioned is sub-section (2) of section twenty-six of the Customs and Inland Revenue Act, 1890, and the provisions of that sub-section as to the certificate shall apply for the purpose. 53 & 54 Vict. c. 8.

PART IV.

MISCELLANEOUS.

17.—(1) The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule. Repeal, commencement, and short title.

(2) This Act shall come into operation on the first day of September nineteen hundred and three and may be cited as the Revenue Act, 1903.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
*	* *	* *
53 & 54 Vict. c. 8 .	The Customs and Inland Revenue Act, 1890.	Sub-section two of section twenty-six, except so far as applied for the purposes of this Act.
54 & 55 Vict. c. 25 .	The Customs and Inland Revenue Act, 1891.	Section four.
*	* *	* *

(*y*) As to this section generally and the meaning of the term "separate dwellings," see s. 26 (2) of the Customs and Inland Revenue Act, 1890, and notes thereto, p. 1851 *ante*. For a similar exemption in the case of working-class lodging houses, see Housing, Town Planning, etc., Act, 1909, s. 35, *post*, p. 1175.

PREVENTION OF CRUELTY TO CHILDREN ACT, 1904.

(4 EDW. 7, c. 15.) (*z*)

An Act to amend the Law relating to the Prevention of Cruelty to Children.
[15th August 1904.]

Restrictions on Employment of Children.

Restrictions on employment of children.

2. If any person—

(b) causes or procures any child, being a boy under the age of fourteen years (*a*), or being a girl under the age of sixteen years (*a*), or, having the custody (*aa*), charge, or care of any such child, allows that child, to be in any street (*b*), or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing, or being exhibited for profit, or offering anything for sale between nine p.m. and six a.m. (*c*); or

(c) procures any child under the age of eleven years, or, having the custody (*aa*), charge, or care of any such child, allows that child, to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing, or being exhibited for profit, or offering anything for sale; or

(d) causes or procures any child under the age of sixteen years, or, having the custody (*aa*), charge, or care of any such child, allows that child, to be in any place for the purpose of being trained as an acrobat, contortionist, or circus performer, or of being trained for any exhibition or performance which in its nature is dangerous,

that person shall, on summary conviction (*d*), be liable, at the discretion of the court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months:

Provided that—

(i.) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school or to any charitable object, if such sale or entertainment is held elsewhere than in the premises which are licensed for the sale of any intoxicating liquor but not licensed according to law for public entertainments, or if, in the case of a sale or entertainment held in any such premises as aforesaid, a special exemption from the provisions of this section has been

(*z*) Many sections and portions of sections of this Act are repealed by the Children Act, 1908. Sections and passages so repealed, sections relating only to Scotland and Ireland, and s. 27 (amending the Criminal Law Amendment Act, 1885, s. 5) are omitted from the text. The Act concerns local authorities by reason of their power to make byelaws under s. 2 (ii), and the duty imposed on their inspectors and officers under s. 3 (2): see s. 32 as to their expenses in executing it.

(*a*) As to presumption of age, see s. 17, *post*, p. 2045.

(*aa*) See note (*u*), *ante*, p. 2040.

(*b*) The definition of "street" originally contained in s. 29 has been repealed by the Children Act, 1908; and apparently there is no statutory definition applicable, but one may perhaps be deduced from the definition of "street trading" in s. 13 of the Employment of Children Act, 1903, p. 2040, *ante*.

(*c*) Greenwich mean time. See the Statutes (Definition of Time) Act, 1880.

(*d*) Appeal to quarter sessions, s. 19, *post*, p. 2045.

granted in writing under the hands of two justices of the peace; and

(ii.) Any local authority (*e*) may, if they think it necessary or desirable so to do, from time to time by byelaw extend or restrict the hours mentioned in paragraph (b) of this section, either on every day or on any specified day or days of the week and either as to the whole of their district or as to any specified area therein; and

(iii.) Paragraphs (c) and (d) of this section shall not apply in any case in respect of which a licence granted under this Act is in force, so far as that licence extends.

Licences for employment of children in public entertainment.

3.—(1) A petty sessional court, or in Scotland the school board, may, notwithstanding anything in this Act, or in the Employment of Children Act, 1903, or any byelaw made thereunder, grant a licence for such time and during such hours of the day and subject to such restrictions and conditions as the court or board think fit, for any child exceeding ten years of age—

(a) to take part in any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement, as aforesaid; or

(b) to be trained as aforesaid; or

(c) for both purposes;

if satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments or being trained as aforesaid, and the court or board may, upon sufficient cause, vary, add to, or rescind any such licence.

Any such licence shall be sufficient protection to all persons acting under or in accordance with the same.

(2) It shall be the duty of inspectors and other officers charged with the execution of the Employment of Children Act, 1903, to see whether the restrictions and conditions of any licence under this section are duly complied with, and any such inspector or officer shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as an inspector appointed under the Factory and Workshop Act, 1901, has to enter, inspect, and examine a factory or workshop under section one hundred and nineteen of that Act, and that section shall apply accordingly.

(3) Where any person applies for a licence under this section, he shall, at laast seven days before making the application, give notice thereof to the chief officer of police for the district in which the licence is to take effect, and that officer may appear or instruct some person to appear before the authority hearing the application, and show cause why the licence should not be granted, and the authority to whom the application is made shall not grant the same unless they are satisfied that notice has been properly so given.

(4) Where a licence is granted under this section to any person, that person shall forthwith cause a copy thereof to be sent to the local authority for the district in which the licence is to take effect, and if he fails to cause such copy to be sent shall be liable on summary conviction to a fine not exceeding five pounds.

(5) Nothing in this or in the last preceding section shall affect the provisions of the Elementary Education Act, 1876, or the Education (Scotland) Act, 1878, as amended by any later enactment. 39 & 40 Vict. c. 79. 41 & 42 Vict. c. 78.

(*e*) Defined by s. 29, *post*, p. 2046. See s. 13 of the Employment of Children Act, 1903, *ante*, p. 2040.

Arrest of Offender and Provision for Safety of Children.

Power to take offenders into custody.

4.—(1) Any constable may take into custody, without warrant, any person—

(a) who within view of such constable commits an offence under this Act, ... where the name and residence of such person are unknown to such constable and cannot be ascertained by such constable ;

* * * * *

(2) Where a constable arrests any person without warrant in pursuance of this section, the inspector or constable in charge of the station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognisance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

Evidence and Procedure.

Evidence of accused person.

12. In any proceeding against any person for an offence under this Act . . . . such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence (*f*).

Evidence of child of tender years.

15.—(1) Where, in any proceeding against any person for an offence under this Act, ... the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth ; and the evidence of such child, though not given on oath, but otherwise taken and reduced into writing in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848 (*g*), or of section fourteen of the Petty Sessions (Ireland) Act, 1851, or of section thirteen of this Act, shall be deemed to be a deposition within the meaning of those sections respectively :

11 & 12 Vict. c. 42.
14 & 15 Vict. c. 93.

Provided that—

(a) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused (*h*) ; and

(b) Any child whose evidence is received as aforesaid and who shall wilfully give false evidence shall be liable to be indicted and tried for such offence, and on conviction thereof may be adjudged such punishment (*i*) as is provided for by section eleven of the Summary Jurisdiction Act, 1879, in the case of juvenile offenders, or in

42 & 43 Vict. c. 49.

(*f*) It would seem that this special enactment prevents the application of the Criminal Evidence Act, 1898, so that the restrictions under that Act do not apply.

☞ (*g*) This section provides that the depositions of persons who have died or are absent may in certain cases be read in evidence.

(*h*) Similar exceptions are contained in s. 2 of the Criminal Law Amendment Act, 1885, and s. 30 of the Children Act, 1908 : *cf.* also the Common Law rule as regards treason and perjury though the evidence of the one witness be sworn evidence.

(*i*) But see now the Children Act, 1908. A fine not exceeding £10, or imprisonment with or without hard labour for not exceeding three months, and, if a male under 14, not more than 12 strokes of a birch rod.

Ireland by section four of the Summary Jurisdiction over Children (Ireland) Act, 1884, in the case of children. 47 & 48 Vict. c. 19.

(2) This section shall not apply to Scotland.

17. Where a person is charged with an offence under this Act, ... or any offence under the Employment of Children Act, 1903, in respect of a child who is alleged on the charge or indictment to be under any specified age, and the child appears to the court to be under that age, such child shall for the purposes of this Act, and the Employment of Children Act, 1903 (*k*), be deemed to be under the age, unless the contrary is proved. Presumption of age of child.

18.—(1) Where a person is charged with committing an offence under this Act . . . . in respect of two or more children, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty for each child unless upon separate informations. Mode of charging offences and limitation of time.

(2) The same information or summons may also charge any person as having the custody, charge, or care, alternatively or together. . . . .

(3) A person shall not be summarily convicted of an offence under this Act, ... unless the offence was wholly or partly committed within six months before the information was laid; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

(4) When an offence under this Act, ... charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

19. When, in pursuance of this Act, any person is convicted by a court of summary jurisdiction of an offence, and such person did not plead guilty or admit the truth of the information, ... he may appeal against such a conviction, ... in England and Ireland to a court of quarter sessions (*l*), and in Scotland to the High Court of Justiciary in manner provided by the Summary Prosecutions Appeals (Scotland) Act, 1875, or any Act amending the same. Appeal from summary conviction to quarter sessions. 38 & 39 Vict. c. 62.

Supplemental.

22. Every byelaw under this Act shall be made by the same authority and confirmed in the same way as byelaws under the Employment of Children Act, 1903 (*l*), or in Scotland as byelaws under section two of the said Act. Provision as to byelaws.

23.—(1) The provisions of this Act relating to the parent of a child shall apply to the step-parent of the child, and to any person cohabiting with the parent of the child, and the expression "parent," when used in relation to a child, includes guardian and every person who is by law liable to maintain the child. Provision as to parents and as to meaning of "custody, charge, or care."

* * * * *

(3) For the purposes of this Act—

Any person who is the parent of a child shall be presumed to have the custody (*m*) of the child; and

Any person to whose charge a child is committed by its parent shall be presumed to have charge of the child; and

Any other person having actual possession or control of a child shall be presumed to have the care of the child.

24. In any proceedings under this Act a copy of an entry in the wages book of any employer of labour, or, if no wages book be kept, a written Evidence of wages of defendant.

(*k*) *Ante*, p. 2036.
(*l*) In accordance with s. 31 of the S. J. A., 1879, set out, *ante*, p. 598.
(*m*) See note (*u*), *ante*, p. 2040.

statement signed by such employer, or by his foreman, shall be *prima facie* evidence that the wages therein entered, or stated as having been paid to any person, have in fact been so paid: Provided that such copy or statement has been signed by such employer, or his foreman, and that the signature of such employer, or foreman, has been witnessed by the person producing the said copy or statement.

General definitions.

29. In this Act, unless the context otherwise requires—

The expression "local authority" has the same meaning as in the Employment of Children Act, 1903:

The expression "chief officer of police" means—

in the city of London and the liberties thereof, the Commissioner of city police:

in the metropolitan police district, the Commissioner of Police of the metropolis:

elsewhere in England, the chief constable, or head constable or other officer, by whatever name called, having the chief local command of the police in the police district in reference to which such expression occurs.

Expenses of local authority.

32. Expenses incurred by a local authority under this Act shall be defrayed in like manner as expenses incurred under the Employment of Chiidren Act, 1903.

Short title and commencement of Act.

33.—(1) This Act may be cited as the Prevention of Cruelty to Children Act, 1904.

(2) The enactments mentioned in the Second Schedule to this Act shall be repealed from the date of the commencement of this Act to the extent specified in the third column to that Schedule.

(3) [*Commencement of Act October* 1*st*, 1904.]

ALKALI, ETC., WORKS REGULATION ACT, 1906.

(6 EDW. 7, c. 14.) (*n*)

An Act to consolidate and amend the Alkali, etc., Works Regulation Acts, 1881 *and* 1892. [4th August 1906.]

PART I.

ALKALI WORKS AND ALKALI WASTE.

Condensation of muriatic acid gas in alkali works.

1.—(1) Every alkali work (*o*) shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector (*p*), of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid (*q*).

(2) The owner (*o*) of any alkali work (*o*) which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence fifty pounds, and in the case of every subsequent offence one hundred pounds (*r*).

(*n*) This Act repeals and re-enacts with amendments the Alkali, etc., Works Regulation Act, 1881, the L. G. B.'s Provisional Order Confirmation (Salt Works) Act, 1884, passed under s. 10 of the Act of 1881, and the Alkali, &c., Works Regulation Acts, 1892.

(*o*) Defined by s. 27, *post*.

(*p*) See ss. 10—14, *post*, as to inspection, and s. 25, *post*, as to determination of questions by chief inspector.

(*q*) As to calculation of acid, see s. 16, *post*.

(*r*) As to recovery of fines, see ss. 17, 18, *post*. The owner may be discharged on proof against the actual offender, s. 20, *post*.

2.—(1) In addition to the condensation of muriatic acid gas as aforesaid the owner (*rr*) of every alkali work (*rr*) shall use the best practicable means (*rr*) for preventing the escape of noxious or offensive gases (*rr*) by the exit flue of any apparatus used in any process carried on in the work, and for preventing the discharge, whether directly or indirectly, of such gases into the atmosphere, and for rendering such gases where discharged harmless and inoffensive, subject to the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector to any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section (*s*). Prevention of discharge of noxious and offensive gas in alkali works.

(2) If the owner of any alkali work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding in the case of the first offence twenty pounds, and in the case of every subsequent offence fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has con tinued (*t*).

3.—(1) Every work of whatever description in which any liquid containing either acid or any other substance capable of liberating sulphuretted hydrogen (*u*) from alkali waste or drainage therefrom is produced or used shall be carried on in such manner that the liquid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance. Separation of acids and other substances from alkali waste and drainage therefrom.

(2) The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence fifty pounds, and in the case of every subsequent offence one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued (*t*).

(3) On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off such liquid as aforesaid produced in such work into the sea or into any river or watercourse into which the liquid can be carried without contravention of the Rivers Pollution Prevention Act, 1876, as amended by any subsequent enactment (*x*); and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act (*y*). 39 & 40 Vict. c. 75.

(4) Compensation (*z*) shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of

(*rr*) Defined by s. 17, *post*.

(*s*) This clause introduces considerable amendments of s. 4 of the repealed Act of 1881. It is extended to all escapes from the exit flue of any apparatus used in any process carried on in the work, and to every discharge of noxious or offensive gases, whether directly or indirectly, into the atmosphere, subject to the qualification mentioned.

(*t*) See note (*r*), *ante*, p. 2046.

(*u*) The inclusion of works in which any liquid containing any substance other than acid capable of liberating sulphuretted hydrogen from alkali waste is produced or used is a new feature. Section 5 of the repealed Act of 1881 was limited to works in which acid was produced or used.

(*x*) See the Acts here referred to, *ante*, p. 1645. As to the discharge of solid matter in suspension into any navigable water, see *United Alkali Co.* v. *Simpson*, *ante*, p. 1651.

(*y*) See ss. 16 and 32 of the P. H. A., 1875, *ante*, pp. 55, 93.

Reference may also be made to *St. Helen's Chemical Works* v. *St. Helen's Corporation* (1876), 1 Ex. D. 196; 40 J. P. 471, where the owners were held liable for a nuisance caused by the evolution of noxious gases in a sewer consequent upon the discharge into the sewer of muriatic acid and sulphur.

(*z*) The amount will be ascertainable under the P. H. A., 1875, s. 308, *ante*, p. 638.

the expenses to be paid by the owner making the request to the sanitary authority under this section.

Deposit or discharge of alkali waste.

4.—(1) Alkali waste shall not be deposited or discharged without the best practicable means (*a*) being used for effectually preventing any nuisance arising therefrom (*b*).

(2) Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding in the case of the first offence twenty pounds, and in the case of every subsequent offence fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued (*c*).

Prevention of nuisance from alkali waste already deposited or discharged.

5. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied (*d*) of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and, if such owner or occupier fails to use the best practicable and reasonably available means (*e*) for the abatement thereof, he shall be liable to a fine not exceeding twenty pounds, and, if he does not proceed to use such means within such time as may be limited by the court inflicting such fine, he shall be liable to a further penalty not exceeding five pounds for every day after the expiration of the time so limited during which such failure continues.

PART II.

SULPHURIC ACID, MURIATIC ACID, AND OTHER SPECIFIED WORKS.

Condensation of acid gases in sulphuric acid and muriatic acid works.

6.—(1) Every sulphuric acid work as defined in paragraph (1) of the First Schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector (*d*), of the acid gases of sulphur or of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in that work, to such an extent that the total acidity of those gases in each cubic foot of residual gases after completion of the process, and before admixture with air, smoke, or other gases, does not exceed what is equivalent to four grains of sulphuric anhydride.

(2) Every muriatic acid work as defined in paragraph (8) of the First Schedule to this Act shall be carried on in such manner as to secure the condensation to the satisfaction of the chief inspector (*a*) of the muriatic acid gas evolved in such work, to such extent that in each cubic foot of air, smoke, or chimney gases escaping from the work into the atmosphere there is not contained more than one-fifth part of a grain of muriatic acid (*f*).

(3) The owner of any sulphuric acid work or of any muriatic acid work which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence fifty pounds, and in the case of every subsequent offence one hundred pounds.

(*a*) Defined by s. 27, *post.*

(*b*) As to the discharge of solid matter in suspension into any navigable water, see *United Alkali Co.* v. *Simpson*, *ante*, p. 1651.

(*c*) As to recovery of fines, see ss. 17, 18, *post.*

(*d*) See s. 27, *post.*

(*e*) "The best practicable means" are defined by s. 27, *post.* The addition of the words "and reasonably available" introduces an element of uncertainty as to whether that definition is to be adhered to. But probably the intention of the Act is that it shall, subject to the court deciding also the question of reasonable availability for itself.

(*f*) As to calculation of acid, see s. 16, *post.*

Prevention of discharge of noxious or offensive gas in scheduled works.

7.—(1) The owner of any work specified in the First Schedule to this Act (hereinafter referred to as a scheduled work) shall use the best practicable means for preventing the escape of noxious or offensive gases (*h*) by the exit flue of any apparatus used in the process carried on in the work, and for preventing the discharge, whether directly or indirectly, of such gases into the atmosphere (*i*), and for rendering such gases where discharged harmless and inoffensive, subject to the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector—

(a) To any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet, where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section:

(b) To any acid gases in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet receiving the residual gases from any process for the concentration or distillation of sulphuric acid, where the total acidity of such acid gases (including those from the combustion of coal) in each cubic foot of air, smoke, or gases so discharged does not exceed what is equivalent to one grain and a half of sulphuric anhydride (*j*).

(2) If the owner of any such work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding in the case of the first offence twenty pounds, and in the case of every subsequent offence fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Provisional Order to prevent discharge of noxious or offensive gas in cement and smelting works.

8.—(1) An inspector may inquire whether, in any works in which aluminous deposits are treated for the purpose of making cement (hereinafter called cement works) or in any works in which sulphide ores, including regulus, are calcined or smelted (hereinafter called smelting works) (*l*), means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of any noxious or offensive gas (*h*) evolved in such works, or for rendering such gas where discharged harmless or inoffensive.

(2) Where it appears to the Local Government Board that such means can be adopted at a reasonable expense, the Board may by Order require the owners of such works to adopt the best practicable means for the purpose, and may by the Order limit the amount or proportion, in the case of cement works or smelting works, of any noxious or offensive gas which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the Order extend to such works such provisions of this Act relating to scheduled works as they think fit.

(3) An Order made under this section shall be provisional only, and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act" when used in this Act shall be

(*h*) Defined by s. 27, *post*.

(*i*) This clause introduces amendments of s. 9 of the repealed Act of 1881 similar to those introduced by s. 2 as regards s. 4 of the same Act, and it also amends the qualification so as to effect a very considerable alteration of the standard of pollution.

(*j*) As to the application of this sub-section in certain cases, see s. 26, *post*.

(*l*) These works are for the first time brought within the scope of this legislation. Smelting works are to a certain extent exempted from the provisions of the P. H. A., 1875. See s. 334 of that Act, *ante*, p. 660.

Salt works, on the other hand, which were partially exempted from the provisions of the repealed Act of 1881 by the Act of 1892, are not mentioned at all in this Act.

deemed to include an Order so confirmed, so far as is consistent with the tenor of that Order.

(4) The Board shall take such steps as they may think fit for giving notice to persons interested of the provisions of any Order made by them under this section before any Bill for confirming the same is introduced into Parliament.

(5) An order made under this section may impose fines for a breach of its provisions of like amount as any fines imposed by this Act for offences against this Act.

(6) An Order made under this section may be repealed, altered, or amended by any subsequent Order made under this section, and confirmed by Parliament (*m*).

PART III.

(i.) REGISTRATION OF WORKS.

Registration of works and stamp duty.

9.—(1) An alkali work, a scheduled work, a cement work, or a smelting work (*n*) shall not be carried on unless it is certified to be registered.

(2) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner (*o*).

(3) A certificate of registration, if issued at a time when a previous certificate is in force, shall be in force for one year after the time when that certificate ceases to be in force, and if issued at a time when no previous certificate is in force shall be in force until the following first day of April.

(4) An application for a certificate of registration of a work may, in the case of the first registration of that work, be made at any time, and an application for any subsequent certificate in respect of that work shall be made in the month of January or February.

(5) A certificate of registration shall be issued on application being made in the prescribed manner (*o*) by the owner of the work, if the conditions of registration are complied with, and one of the conditions (*p*) in the case of the first registration of an alkali or scheduled work, or the registration of such a work if the work has been closed for a period of twelve months previously, shall be that the work is at the time of registration furnished with such appliances as appear to the chief inspector or, on appeal, to the Local Government Board to be necessary in order to enable the work to be carried on in accordance with such of the requirements of this Act as apply to the work.

Provided that the Local Government Board may dispense with the last-mentioned condition in the case of works erected before the commencement of this Act which were not before the commencement of this Act required to be registered.

(6) There shall be charged upon every such certificate a stamp duty of five pounds in the case of an alkali work, and of three pounds in the case of any other work, and the Commissioners of Inland Revenue shall issue stamped forms of certificate for the purpose (*q*).

(7) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to the Local Government Board, and the register and the certificate shall be altered accordingly in the prescribed

(*m*) No power of repeal, etc., was included in the corresponding s. 10 of the repealed Act of 1881.

(*n*) See note (*l*), *ante*, p. 2049.

(*o*) Prescribed means prescribed by the L. G. B. See s. 25, *post.*

(*p*) This condition and the proviso which follows are new.

(*q*) The Acts relating to stamp duties are not expressly applied as by s. 13 of the repealed Act of 1881, but they are nevertheless applicable.

manner (*r*) without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.

(8) The owner of a work which has been carried on in contravention of this section shall be liable to a fine not exceeding fifty pounds (*s*).

(ii.) Inspection.

10.—(1) The Local Government Board shall, with the approval of the Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they may fix) as the Board think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors. Appointment of inspectors.

(2) Notice of the appointment of every such inspector shall be published in the London Gazette, and a copy of the Gazette shall be evidence of the appointment.

(3) The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Treasury may sanction, shall be paid out of moneys provided by Parliament.

(4) A person holding the office of chief inspector or inspector shall not be employed in any other work except with the sanction of the Local Government Board.

(5) In the case of the illness or other unavoidable absence of the chief inspector, the Local Government Board may appoint any other inspector to act as his deputy, and the inspector so appointed shall, whilst so acting, have all the powers by or under this Act conferred on the chief inspector.

11. A person who Disqualification of certain persons for inspectors.

(a) acts or practises as a land agent (*t*); or

(b) is engaged or interested directly or indirectly in any work to which this Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act; or

(c) is employed in or about or in connexion with any work to which this Act applies, or in any other chemical work for gain,

shall be disqualified to act as an inspector under this Act.

12.—(1) For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night without giving previous notice, but so as not to interrupt the process of the manufacture, Inspection of works.

(a) enter and inspect any work to which, in the opinion of the Local Government Board (*u*) any of the provisions of this Act applies; and

(*r*) Prescribed means prescribed by the L. G. B. See s. 25, *post*.

(*s*) This fine is recoverable under s. 17, *post*, but is not subject to the three months' limitation thereby imposed.

(*t*) This is a term of no very definite meaning. A person who manages the landed estate of another is a land agent in common parlance, and such a person is doubtless referred to here, though there are persons in other positions who are called land agents.

(*u*) Under the repealed statute the opinion of the L. G. B. was not referred to. The Board's opinion is now conclusive for this purpose.

(b) examine any process causing the evolution of any noxious or offensive gas (*v*) and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged; and

(c) ascertain the quantity of gas discharged into the atmosphere, condensed or otherwise dealt with; and

(d) enter and inspect any place where alkali is treated or deposited, or where any liquid containing either acid or any other substance (*x*) capable of liberating sulphuretted hydrogen from alkali waste or drainage (*x*) therefrom; and

(e) apply any such tests and make any such experiments, and generally make all such inquiries, as seem to him to be necessary or proper for the execution of his duties under this Act (*y*).

(2) The owner of any such work shall, on the demand of the chief inspector, furnish him within a reasonable time with a sketch plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas or any process for the condensation of such gas or for preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged is carried on.

(3) The owner of every such work and his agents shall render to every inspector all necessary facilities for entry, inspection, examination, and testing in pursuance of this Act.

(4) Every owner of a work in which such facilities are not afforded to an inspector as are required by this Act, or in which an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be liable on conviction under the Summary Jurisdiction Acts (*z*) to a fine not exceeding ten pounds.

Annual report to Local Government Board.

13. The chief inspector shall, on or before the first day of March in every year, make a report in writing to the Local Government Board of the proceedings of himself and of the other inspectors under this Act, and a copy of such report shall be laid before both Houses of Parliament (*a*).

Additional inspector on application of sanitary authorities.

14.—(1) If any sanitary authority apply to the central authority (*b*) for an additional inspector under this Act, and undertake to pay a proportion of his salary or remuneration, not being less than one half, the Local Government Board may (if they see fit), with the sanction of the Treasury, appoint an additional inspector under this Act, to reside within a convenient distance of the works he is required to inspect; and such inspector shall have the same powers and be subject to the same power of removal and to the same regulations and liabilities as other inspectors under this Act.

(2) The proportion of salary or remuneration aforesaid shall be paid at

(*v*) Defined by s. 27, *post*.

(*x*) This is an extension of the corresponding provisions of s. 16 of the repealed Act of 1881.

(*y*) This clause is new. Under the repealed statute there was power simply to inquire into all matters which tended to show compliance or non-compliance with the Act, or which seemed necessary or proper for the execution of his duties, but no specific power to apply tests or make experiments.

(*z*) The application of the summary process for recovery of this fine is new.

(*a*) It was thought unnecessary in this section to re-enact that the other inspectors should furnish the chief inspector with a detailed account of the number of inspectors of works in their district, and the recorded escapes of acid gases from such works during the preceding year, having regard to the general powers which the L. G. B. possess under s. 10, *ante*, p. 2051.

(*b*) That is, the L. G. B. See s. 27, *post*, p. 2057.

the prescribed times into the Exchequer, and shall be a debt due from the sanitary authority to the Crown (*c*).

(iii.) Special Rules.

15.—(1) The owner of an alkali work or of a scheduled work may, with the sanction of the central authority (*d*), make special rules for the guidance of his workmen who are employed in or in connexion with any process causing the evolution of any noxious or offensive gas, or in or in connexion with the condensation or other treatment of that gas, and may annex fines to any violation of such rules, so that the fine for any offence do not exceed two pounds.

Power of owners of works to make special rules

(2) A printed copy of the special rules in force under this section in any work shall be given by the owner of that work to every person working or employed in or about that work who is affected thereby.

(3) Any fine incurred under this Act in respect of an offence against a special rule may be recovered in accordance with the Summary Jurisdiction Acts.

(iv.) Procedure.

16. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

Provision as to calculation of acid.

17. The following regulations shall have effect with respect to the recovery of fines for offences under this Act other than fines recoverable summarily :—

Recovery of fines for offences against Act in county court.

(1) Every such fine (*e*) shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed :

(2) The action shall not be brought without the sanction of the central authority, nor by any person other than the chief inspector or such other inspector as the Local Government Board may in any particular case direct, nor, except as respects a fine for the contravention of the provisions of this Act as to the registration of works (*g*), after the expiration of three months from the commission of the offence (*h*), and for the purposes of such action the fine shall be deemed to be a debt due to such inspector (*i*) :

(3) The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring the action, until the contrary is proved by the defendant (*j*) :

(*c*) The effect is that the debt is recoverable by an immediate extent of the property of the local authority in case of default of payment on demand.

(*d*) That is, the L. G. B. See s. 27, *post*, p. 2057.

(*e*) The word "fine" seems hardly applicable to a sum which is to be recovered by civil proceedings. It is equivalent here to "penalty." This Act provides for maximum and not for fixed penalties, and does not point out who is to decide the proper amount. The fine is to be claimed as a debt, and it seems that the inspector should sue for the maximum amount, the judge of the court giving judgment for the amount he shall deem sufficient.

(*g*) This exception is new. The fine in such case is a sum not exceeding £50, see s. 9 (8), *ante*.

(*h*) The offence may be continuing, or there may be a separate offence for every day it is continued. See for continuing offences, ss. 2 (2), 3 (2), 4 (2), 7 (2), *ante*, and ss. 1 (2), 6 (3), *ante*, and 18, *post*.

(*i*) As to the application of the fine, see s. 19, *post*. There is no express provision for the costs of the inspector, but as he will be acting officially, it is presumed that the costs so far as not recovered from the defendant will be paid by the Treasury.

(*j*) It will therefore not be necessary for the inspector to produce the Gazette which according to s. 10 (2) will be evidence of his appointment.

(4) The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just; and the amount so awarded shall be deemed to be costs in the action:

(5) If either party in any action under this Act feels aggrieved by the decision or direction of the court in point of law, or on the merits (*l*), or in respect of the admission or rejection of any evidence, he may appeal to the High Court:

(6) Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and to appeals shall apply as if the action related to a matter within the ordinary jurisdiction of the court.

Further provisions as to recovery of fines in county court.

18.—(1) In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule (*m*)—

(a) It shall be sufficient to allege that any work is a work to which this Act applies, without more; and

(b) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

(2) A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

(3) Not less than twenty-one days before the hearing of any proceeding against an owner (*n*) to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means (*n*) as required by this Act, an inspector shall serve on the owner (*n*) proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognisance of the matter.

(4) A person shall not be liable under this Act to an increased fine in respect of a second offence, or in respect of a third or any subsequent offence, unless a fine has been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence, as the case may be.

Application of fines.

19. All fines recovered under this Act, other than those recovered summarily (*o*), shall be paid into the Exchequer.

Discharge of owner on conviction of actual offender.

20. The owner (*n*) of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he proves to the satisfaction of the court before

(*l*) This appears to signify the effect of the facts proved in evidence, but the term though in common use is indefinite, and may perhaps be considered to include the amount of the penalty.

(*m*) As to special rules, see s. 15, *ante*.

(*n*) Defined by s. 27, *post*.

(*o*) Fines recovered summarily include all fines in respect of offences against a special rule under s. 15, *ante*,, or for obstruction under s. 12 (4), *ante*,. The fines so recovered not being appropriated, must be paid to the county or borough treasurer under the S. J. A., 1848, s. 31, and the Criminal Justice Administration Act, 1851, s. 11.

Receipts for fines whether recovered in the County Court, or summarily, are exempt from stamp duty (see the Revenue Act, 1898, s. 8; amending the Stamp Act, 1891 Schedule I.)

which any proceeding is instituted to recover such fine, that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed, without his knowledge, consent, or connivance, by some agent servant or workman, whom he shall charge by name as the actual offender; in which case such agent servant or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof and of the costs of all proceedings which may be taken either against himself or against the owner under this Act:

Provided that it shall be lawful for the inspector to proceed against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case where the inspector is satisfied that the owner has used all due diligence to comply with and to enforce the provisions of this Act, and that the offence has been committed by that person without the knowledge, consent, or connivance of the owner (*p*).

Service of notices.

21. Any notice, summons, or other document required or authorised for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by post or by delivering the same to the owner or at his residence or works; and the document shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner (*q*).

Complaint by sanitary authority in cases of nuisances.

22.—(1) Where complaint is made to the central authority (*r*) by any sanitary authority (*r*), on information given by any of their officers, or any ten inhabitants of their district, that any work to which this Act applies is carried on (either within or without the district) in contravention of this Act, or that any alkali waste is deposited or discharged (either within or without the district) in contravention of this Act, and that a nuisance is occasioned thereby to any of the inhabitants of their district, the central authority shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think fit and just.

(2) The sanitary authority (*r*) complaining shall, if so required by the central authority, pay the expense of any such inquiry (*s*).

Actions in case of contributory nuisance.

23.—(1) Where a nuisance arising from the discharge of any noxious or offensive gas (*r*) or gases is wholly or partially caused by the acts or defaults of the owners (*r*) of several works to which any of the provisions of this Act applies, any person injured by such nuisance may proceed against any one or more of such owners, and may recover damages from each owner made a defendant in proportion to the extent of the contribution of that defendant to the nuisance, notwithstanding that the act or default of that defendant would not separately have caused a nuisance (*t*).

(2) This section shall not authorise the recovery of damages from any defendant who can produce a certificate from the chief inspector that in the works of that defendant the requirements of this Act have been complied with and were complied with when the nuisance arose.

(*p*) Compare the Margarine Act, 1887, s. 5, *ante*, p. 1801, the Locomotives Act, 1898, s. 13 (2), *ante*, p. 1913, and the Factory and Workshop Act, 1901, ss. 140 and 141, *ante*, p. 2010.

(*q*) Compare s. 267 of the P. H. A., 1875, *ante*, p. 590.

(*r*) Defined by s. 27, *post*.

(*s*) As to the fund out of which these expenses are payable, see s. 24, *infra*.

(*t*) See note (*g*), *ante*, p. 1646.

(v.) MISCELLANEOUS.

Expenses of sanitary authorities.

24. Any expenses incurred by a sanitary authority (*u*) under this Act shall be defrayed as general expenses incurred by the authority in the execution of the Public Health Act (*x*).

Determination of questions by chief inspector.

25. In determining any matter which under this Act is to be determined by the chief inspector, the chief inspector may found his opinion on facts disclosed by his own examination, or by an examination by any other inspector.

Temporary provision as to the over-heat pan process.

26.—(1) For a period of three years after the commencement of this Act paragraph (b) of section seven of this Act shall apply, where the process for the concentration of sulphuric acid is that known as the over-heat pan process, as if in that paragraph two grains of sulphuric anhydride were substituted for one grain and a half of sulphuric anhydride.

(2) For the purposes of this section " the over-heat pan process " means the process in which the concentration of sulphuric acid is effected by the passage of the heated gases resulting from the combustion of fuel over the surface of the acid.

Interpretation of terms.

27.—(1) In this Act, unless the context otherwise requires—

The expression " alkali work " means every work for—

(a) the manufacture of sulphate of soda or sulphate of potash, or

(b) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed,

in which muriatic acid gas is evolved :

The expression " noxious or offensive gas " includes the following gases and fumes :—

Muriatic acid ;
Sulphuric acid ;
Sulphurous acid, except that arising solely from the combustion of coal ;
Nitric acid and acid-forming oxides of nitrogen ;
Sulphuretted hydrogen ;
Chlorine, and its acid compounds ;
Fluorine compounds ;
Cyanogen compounds ;
Bisulphide of carbon ;
Chloride of sulphur ;
Fumes from cement works ;
Fumes containing copper, lead, antimony, arsenic, zinc, or their compounds ;
Fumes from tar works :

The expression " owner " includes any lessee, occupier, or any other person carrying on any work to which this Act applies :

The expression " best practicable means," where used with respect to the prevention of the escape of noxious and offensive gases, has reference not only to the provision and the efficient maintenance of appliances adequate for preventing such escape, but also to the manner in which such appliances are used and to the proper supervision, by the owner, of any operation in which such gases are evolved :

(*u*) Defined by s. 27, *infra*.

(*x*) That is if an urban district council out of the general district fund or rate. See the P. H. A., 1875, s. 207, *ante*, p. 468 ; and if a rural district council, then as general expenses under s. 229 of the same Act, *ante*, p. 509.

The expression "prescribed" means prescribed by the Local Government Board:

The expression "Local Government Board" means the Local Government Board established by the Local Government Board Act, 1871: 34 & 35 Vict. c. 70.

The expression "central authority" means as regards England the Local Government Board (*y*):

The expression "sanitary authority" means any local authority entrusted with the execution of the Public Health Act:

The expression "the Public Health Act" means as regards England the Public Health Act, 1875, or in the case of London the Public Health (London) Act, 1891 (*y*); and includes any enactment amending those Acts. 38 & 39 Vict. c. 55. 54 & 55 Vict. c. 76.

(2) Nothing in this Act shall be construed as exempting any work from any of the provisions of this Act applicable to the work as being a work of a certain class or description by reason only that the work is subject to other provisions of this Act as being a work of some other class or description.

28. [*Application to Scotland.*] (*y*)

29. Nothing in this Act shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action, indictment, or otherwise, to which he would have been entitled if this Act had not passed (*z*). Saving as to general law

30. The Acts specified in the second schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule. Repeals.

Provided that—

(a) Nothing in this Act shall affect any certificate, special rule, or notice issued, made, or served before the commencement of this Act in pursuance of any enactment so repealed, but every such certificate, special rule, and notice shall continue in force as if issued, made, or served in pursuance of this Act; and

(b) Nothing in this Act shall affect the tenure of office of any inspector appointed under any enactment so repealed, but every such inspector shall hold office as if appointed under this Act; and

(c) Nothing in this Act shall affect any liability of a sanitary authority incurred under any enactment so repealed to pay any proportion of the salary or remuneration of an additional inspector.

31. This Act may be cited as the Alkali, etc., Works Regulation Act, 1906, and shall come into operation on the first day of January nineteen hundred and seven. Short title and commencement.

SCHEDULES.

FIRST SCHEDULE.

Sections, 6, 7.

List of Works.

1. Sulphuric acid works, that is to say, works in which the manufacture of sulphuric acid is carried on by the lead chamber process, namely, the process by which sulphurous acid is converted into sulphuric acid by the agency of oxides of nitrogen and by the use of a lead chamber.

2. Sulphuric acid (Class II.) works, that is to say, works in which the manufacture of sulphuric acid is carried on by any process other than the lead chamber process, and works for the concentration or distillation of sulphuric acid.

3. Chemical manure works, that is to say, works in which the manufacture of chemical manure is carried on, and works in which any mineral phosphate

(*y*) Words here following are omitted as relating only to Scotland or Ireland.
(*z*) Compare the Gasworks Clauses Act, 1847, s. 29, *ante*, p. 1401.

is subjected to treatment involving chemical change through the application or use of any acid.

4. Gas liquor works, that is to say, works (not being sulphate of ammonia works or muriate of ammonia works) in which sulphuretted hydrogen or any other noxious or offensive gas is evolved by the use of ammoniacal liquor in any manufacturing process, and works in which any such liquor is desulphurised by the application of heat in any process connected with the purification of gas.

5. Nitric acid works, that is to say, works in which the manufacture of nitric acid is carried on and works in which nitric acid is recovered from oxides of nitrogen.

6. Sulphate of ammonia works and muriate of ammonia works, that is to say, works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on.

7. Chlorine works, that is to say, works in which chlorine is made or used in any manufacturing process.

8. Muriatic acid works, that is to say—

(a) Muriatic acid works, or works (not being alkali works as defined in this Act) where muriatic acid gas is evolved either during the preparation of liquid muriatic acid or for use in any manufacturing process;

(b) Tin plate works, that is to say, works in which any residue or flux from tin plate works is calcined for the utilisation of such residue or flux, and in which muriatic acid gas is evolved; and

(c) Salt works, that is to say, works (not being works in which salt is produced by refining rock salt, otherwise than by the dissolution of rock salt at the place of deposit) in which the extraction of salt from brine is carried on, and in which muriatic acid gas is evolved.

9. Sulphide works, that is to say, works in which sulphuretted hydrogen is evolved by the decomposition of metallic sulphides, or in which sulphuretted hydrogen is used in the production of such sulphides.

10. Alkali waste works, that is to say, works in which alkali waste or the drainage therefrom is subjected to any chemical process for the recovery of sulphur or for the utilisation of any constituent of such waste or drainage.

11. Venetian red works, that is to say, works for the manufacture of Venetian red, crocus, or polishing powder, by heating sulphate or some other salt of iron.

12. Lead deposit works, that is to say, works in which the sulphate of lead deposit from sulphuric acid chambers is dried or smelted.

13. Arsenic works, that is to say, works for the preparation of arsenious acid, or where nitric acid or a nitrate is used in the manufacture of arsenic acid or an arseniate.

14. Nitrate and chloride of iron works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of nitrate or chloride of iron.

15. Bisulphide of carbon works, that is to say, works for the manufacture of bisulphide of carbon.

16. Sulphocyanide works, that is to say, works in which the manufacture of any sulphocyanide is carried on by the reaction of bisulphide of carbon upon ammonia or any of its compounds.

17. Picric acid works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of picric acid.

18. Paraffin oil works, that is to say, works in which crude shale oil is refined.

19. Bisulphite works, that is to say, works in which sulphurous acid is used in the manufacture of acid sulphites of the alkalis or alkaline earths.

20. Tar works, that is to say, works where gas tar or coal tar is distilled or is heated in any manufacturing process.

21. Zinc works, that is to say, works in which, by the application of heat, zinc is extracted from the ore, or from any residue containing that metal.

SECOND SCHEDULE.

Section 30.

Repeals.

Session and Chapter.	Short Title.	Extent of Repeal.
44 & 45 Vict. c. 37 .	The Alkali, etc., Works Regulation Act, 1881.	The whole Act.
47 & 48 Vict. c. cxlvii.	The Local Government Board's Provisional Order Confirmation (Salt Works) Act, 1884.	The whole Act.
55 & 56 Vict. c. 30 .	The Alkali, etc., Works Regulation Act, 1892.	The whole Act.

OPEN SPACES ACT, 1906.

6 Edw. 7, c. 25 (*a*).

An Act to consolidate Enactments relating to Open Spaces. [4th August 1906.]

Local Authorities.

Local authorities.

1. Each of the following bodies shall be a local authority for the purposes of this Act, namely—

The council of any county, of any municipal or metropolitan borough, or of any district:

The common council of the city of London:

Any parish council invested with the powers of this Act by an order of the council of the county within which the parish is situate.

Power to transfer Open Spaces and Burial Grounds to Local Authorities.

Power of trustees under local Act to transfer open spaces to local authority or admit other persons to enjoyment thereof (*b*).

2.—(1) Where an open space (*c*) is, in pursuance of a local or private Act of Parliament, placed under the care and management of trustees or other persons (in this section referred to as trustees), with a view to the preservation and regulation thereof as a garden or open space, the trustees may, in pursuance of a special resolution (*d*), and with the consent, signified by a special resolution (*d*), of the owners (*c*) and occupiers (*c*) of any houses which front upon the open space, or of which the owners and occupiers are liable to be specially rated for the maintenance of the open space—

(a) convey, for or without any consideration, to any local authority, their estate or interest in the open space or, if they have no such estate or interest, transfer to any local authority the entire care and manage-

(*a*) This Act repeals and consolidates with amendments the whole of the previous legislation on the subject except so much of s. 4 of the Open Spaces Act, 1887, as amends the Disused Burial Grounds Act, 1884, *ante*, pp. 1788, 1804.

(*b*) This section reproduces s. 2 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

(*c*) Defined by s. 20, *post*.

(*d*) As to special resolutions and consents, see s. 8, *post*.

ment of the open space, to the end that the space may be preserved for the enjoyment of the public; or

(b) grant, for or without any consideration, to any local authority any term of years or other limited interest in or any right or easement over the open space; or

(c) make any agreement with any local authority for the opening to the public of the open space and the care and management thereof by the local authority, either at all times or at any specified time or times; or

(d) notwithstanding anything in the Act or any instrument under which the trustees are constituted or act, admit persons not owning, occupying, or residing in any house fronting on the open space to the enjoyment of the open space, either at all times or at any specified time or times, and regulate the admission of such persons thereto on such terms and conditions as the trustees think proper.

(2) Where the freehold of the open space and the freehold of all or the greater part of the houses round the open space are vested in the same person the powers conferred by this section shall not be exercised without the consent of that person.

(3) Any such conveyance, transfer, grant, or agreement shall be made, if the trustees are a corporation, by an instrument under the common seal of the trustees, and if the trustees are not a corporation, by an instrument under the hands and seals of any five of the trustees, or of all the trustees if for the time being they are less than five in number.

(4) Any conveyance, transfer, grant, or agreement under this section shall be deemed a good execution of the trusts, powers, and duties imposed or conferred upon the trustees by the Act or instrument under which they are constituted or act, and where the trustees convey their entire interest in, or transfer the entire care and management of, the open space they shall, on the execution of the conveyance or transfer, be relieved and discharged from all trusts, powers, and duties under the Act or instrument or otherwise with reference to the open space.

(5) The trustees shall hold any purchase money or rent paid for or in respect of the open space in trust for the benefit of the persons or class of persons for whose benefit the open space was previously preserved and managed by the trustees, or, as the case may be, for the benefit of the objects to which any rates previously imposed in respect of the open space had been applied, and such persons or class of persons shall be discharged either absolutely, or, if the grant was for a term of years or other limited interest, during the continuance of that interest, from any special rate or other obligation previously imposed on them in respect of the open space.

Transfer to local authority of spaces held by trustees for purpose of public recreation (*e*).

3.—(1) Where any land is held by trustees (not being trustees elected or appointed under any local or private Act of Parliament) upon trust for the purposes of public recreation, the trustees may, in pursuance of a special resolution (*f*), transfer the land to any local authority by a free gift absolutely or for a limited term, and, if the local authority accept the gift, they shall hold the land on the trusts and subject to the conditions on and subject to which the trustees held the same, or on such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed on between the trustees and the local authority with the approval of the Charity Commissioners.

(2) Subject to the obligation of the land so transferred being used for

(*e*) This section reproduces s. 3 of the Open Spaces Act, 1890.
(*f*) See s. 8, *post*.

the purposes of public recreation, the local authority may hold the land as and for the purposes of an open space under this Act.

4.—(1) Where an open space is vested in trustees, other than such as are mentioned in the foregoing provisions of this Act, for any charitable purpose and as part of their trust estate, and it appears to the majority of the trustees that the open space is no longer required for the purposes of their trust, or may with advantage to the trust be dealt with under this section, the trustees may, in pursuance of a special resolution (*h*), and where the open space is subject to the Charitable Trusts Acts, 1853 to 1894 (*i*), with such authority or approval (*j*) as is required by those Acts for a sale of the open space, and in other cases in pursuance of an order of the court to be obtained as hereinafter provided, convey or demise the open space to any local authority on such terms as they may agree, and the local authority shall thenceforth be entitled to hold the same as an open space on the terms and under the conditions specified in the conveyance or demise, or on such terms or under such conditions as may be so authorised or approved, or as the court may from time to time order, as the case may be.

Transfer by charity trustees of open space to local authority (*g*).

(2) The court for the purposes of this section shall be either the High Court or the county court of the district in which the whole or any part of the open space is situate.

(3) An order of the court for the purposes of this section may be made upon application by the trustees, in manner directed by rules of court (*k*), and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons, as to the court seem expedient, and may make such order thereon as in the discretion of the court appears proper.

5.—(1) Where any open space (*m*) is subject to rights of user for exercise and recreation in the owners (*m*) or occupiers (*m*), or both, of any houses round or near the same, whether the rights are secured by covenant or not, the owner of the open space may, with the consent, signified by a special resolution (*h*), of such owners or occupiers, or both, as the case may require,—

Transfer to local authority by owners of open spaces subject to rights of user (*l*).

(a) convey to any local authority his estate or interest in the open space in trust for the enjoyment of the public; or

(b) grant to any local authority in trust as aforesaid any term of years or other limited interest in or any right or easement over the open space; or

(c) make an agreement with any local authority for the opening to the public of the open space and the care and management thereof by the local authority either at all times or at any specified times:

and thereupon the owner shall be discharged from any liability to any person entitled to any right of user in respect of any act done in accordance with the consent so given.

(*g*) This section reproduces s. 4 of the Open Spaces Act, 1890.
(*h*) See s. 8, *post*.
(*i*) These Acts are as follows: the Charitable Trusts Acts, 1853; 1855; 1860; 1862; 1869; 1887, and the Charity Trusts (Recovery) Act, 1891.
(*j*) The authority or approval required seems to be that of the Charity Commissioners under s. 24 of the Charitable Trusts Act, 1853.
(*k*) No rules were made under the corresponding ss. 4 and 5 of the Open Spaces Act, 1890, or have as yet been made under this section.
(*l*) Sub-ss. (1) and (2) of this section are taken from s. 3 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.
Sub-s. (3) is taken from s. 2 of the Metropolitan Open Spaces Act, 1877, as extended by the Open Spaces Act, 1887.
(*m*) Defined by s. 20, *post*.

(2) Where any person has any term of years or other limited interest in any such open space this section shall apply to him with reference to that interest in like manner as it applies to the owner of the open space.

(3) Where any open space is used as a place of exercise and recreation for the inhabitants of certain houses, and the property and right of user is vested in one or more persons as owners or occupiers of the houses, those owners and occupiers (if any) may convey to a local authority in trust for the public a right to enter upon, use, and enjoy the open space subject to such terms and conditions as may be agreed upon.

Transfer of disused burial grounds to local authority (*o*).

6. The owner (*n*) of any disused burial ground (*n*) may convey the burial ground to, or grant any term of years or other limited interest therein to, or make any agreement with, any local authority for the purpose of giving the public access to the burial ground, and preserving the same as an open space accessible to the public and under the control of the local authority, and for the purpose of improving and laying out the same.

Power of corporation, &c., to convert land for open space (*p*).

7.—(1) Any corporation (other than a municipal corporation) or persons having power, either with or without the consent of any other corporation or persons, to sell any land may, but with the like consent (if any), convey, for or without any consideration, to any local authority that land, or any part thereof, for the purpose of the same being preserved as an open space for the enjoyment of the public under this Act, and may so convey the same with or without conditions, and the local authority may accept the land for that purpose, and, if conditions are imposed, subject to such conditions.

(2) Where a corporation having power under this section to convey land are themselves a local authority, this section shall enable the authority to appropriate their land as an open space for the enjoyment of the public, and shall, with the necessary modifications, apply to the appropriation in like manner as it applies to the conveyance.

(3) Every parish council shall be a local authority for the purposes of this section.

Special resolutions and consents (*q*).

8.—(1) A resolution shall for the purposes of this Act be a special resolution (*q*) when it has been—

(a) passed by a majority of at least two-thirds of the persons present at a meeting summoned as hereinafter provided ; and

(b) confirmed by another resolution passed by a majority of at least two-thirds of the persons present at a meeting summoned as hereinafter provided and held after an interval of not less than one month from the first meeting.

(2) A meeting of trustees for the purposes of this Act shall be summoned by a notice stating generally the object of the meeting, which notice shall be

(*n*) Defined by s. 20, *post*.

(*o*) This section is taken from s. 4 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

A faculty was granted and a transfer made under the earlier Act in *Re Mount Street Burial Ground* (1888), 4 T. L. R. 661.

(*p*) This section is taken from s. 7 of the Open Spaces Act, 1887, as extended by s. 17 (3) of the Commons Act, 1899.

Sanitary authorities have power to sell land not required for the particular purpose for which it was acquired under s. 175 of the P. H. A., 1875, *ante*, p. 410. Instead of selling such land they may under this section appropriate it as an open space. As to education authorities appropriating land for non-educational purposes, see s. 5 of the Education (Administrative Provisions), Act, 1909.

(*q*) Special resolutions are required under ss. 2, 3, 4 and 5, *supra*.

This section re-enacts similar provisions of s. 2 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

left at, or sent by post, at least one month before the date of the meeting, to the last known or usual place of abode of each trustee.

(3) A meeting of owners and occupiers of houses under this Act shall be summoned by a notice stating generally the object of the meeting, which notice shall be left at, or sent through the post to, each of such houses, at least one month before the date of the meeting, and shall be inserted as an advertisement at least three times in any two or more papers circulating in the neighbourhood.

(4) If at any meeting of trustees or of owners and occupiers under this Act a resolution with respect to an open space is rejected, no meeting of the trustees, or, as the case may be, the owners or occupiers, shall be called or held with the same object and with respect to the same open space until the expiration of three years from the date of the rejection.

(5) A meeting of owners or occupiers of houses for the purposes of this Act shall not be held between the first day of August in one year and the thirty-first day of January in the following year.

Powers of Local Authorities with respect to Open Spaces and Burial Grounds.

Power of local authority to acquire open space or burial ground (*r*).

9. A local authority may, subject to the provisions of this Act,—

(a) acquire by agreement and for valuable or nominal consideration by way of payment in gross, or of rent, or otherwise, or without any consideration, the freehold of, or any term of years (*s*) or other limited estate or interest in, or any right or easement in or over, any open space or burial ground (*t*), whether situate within the district of the local authority or not; and

(b) undertake the entire or partial care, management, and control of any such open space or burial ground, whether any interest in the soil is transferred to the local authority or not; and

(c) for the purposes aforesaid, make any agreement with any person authorised by this Act or otherwise to convey or to agree with reference to any open space or burial ground, or with any other persons interested therein.

Maintenance of open spaces and burial grounds by local authority (*u*).

10. A local authority who have acquired any estate or interest in or control

(*r*) This section is taken from the first paragraph of s. 5 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

(*s*) Where a vestry acquired the residue of a term of twenty-six years in an open space by assignment of the lease creating the term, it was held that they were "owners" within the meaning of s. 250 of the Metropolis Management Act, 1855 (*St. Mary Islington Vestry* v. *Cobbett*, [1895] 1 Q. B. 369).

On the other hand, in *London C. C.* v. *Wandsworth Borough Council*, [1903] 1 K. B. 797; 67 J. P. 215, the Court of Appeal held that the county council were not owners of a common vested in them by statute as a public recreation ground, and overruled the case of *Fulham Vestry* v. *Minter*, [1901] 1 K. B. 501; 65 J. P. 180, where it had been held that the vestry were owners of an open space acquired by them under the powers conferred by the Open Spaces Acts, 1877 and 1881.

(*t*) Defined by s. 20, *post.*

(*u*) This section is taken from the second paragraph of s. 5 of the Metropolitan Open Spaces Act, 1881, as amended by s. 7 of the Open Spaces Act, 1890, and extended by the Open Spaces Act, 1887.

But there is also an important amendment here introduced for the first time by the omission of the words "free from buildings," which occurred in the original enactment. These words had given rise to considerable litigation in the case of *Paddington Borough Council* v. *Att.-Gen.*, [1906] A. C. 1; 70 J. P. 41, where it was held that the local authority were entitled, notwithstanding those words, to prevent by the erection of a screen or other suitable means anything which might interfere with the free use by the public of the open space, and to prevent the acquisition of an easement of light or other adverse right over such space by an adjoining owner. The effect of the omission of these words,

over any open space or burial ground (*v*) under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired—

(a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose ; and

(c) maintain and keep the open space or burial ground in a good and decent state,

and may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them.

Special provisions as to management of burial grounds and removal of tombstones.

11.—(1) A local authority shall not exercise any of the powers of management under this Act with reference to any consecrated burial ground (*v*) unless and until they are authorised to do so by the licence or faculty of the bishop (*x*).

(2) The playing of any games or sports shall not be allowed in any burial ground in or over which a local authority have acquired any estate, interest, or control under this Act, except that—

(a) in the case of a consecrated burial ground, the bishop by licence or faculty ; and

(b) in the case of any burial ground which is not consecrated, the persons from whom the local authority have acquired the estate, interest, or control in or over the same

may expressly sanction any such use of the burial ground, and may specify any conditions as to the extent or nature of such use (*y*).

(3) In the case (*z*) of any disused burial ground (*a*), at least three months before removing or changing the position of any tombstone or monument, a local authority shall—

(a) prepare a statement sufficiently describing by the name and date appearing thereon the tombstones and monuments standing or being in the ground, and such other particulars as may be necessary, and shall cause this statement to be deposited with the clerk of the local authority, and to be open to inspection by all persons ; and

(b) insert an advertisement of the intention to remove or change the position of such tombstones and monuments three times at least in some newspaper circulating in the neighbourhood, and by that advertisement give notice of the deposit of the statement hereinbefore described, and of the place at which and the hours within which the same may be inspected ; and

(c) place a notice in terms similar to the advertisement on the door of the church (if any) to which the burial ground is attached, and deliver

"free from buildings," is to leave the local authority clearly at liberty to erect on an open space buildings conducive to the public enjoyment of the open space as such, but presumably, (see 2s. 0), such buildings should not occupy more than one-twentieth of the whole area.

(*v*) Defined by s. 20, *post*, p. 2067.

(*x*) This sub-section is taken from the proviso to s. 5 of the Metropolitan Open Spaces Act, 1881.

Faculties were granted under that section in *Re Mount Street Burial Ground* (1888), 4 T. L. R. 661 ; *Re St. George's Burial Ground* (1888), 4 T. L. R. 703, and for filling up vaults out of repair in *Vicar of St. Botolph-without-Aldgate* v. *Parishioners*, [1892] P. 173.

(*y*) This sub-section is taken from sub-s. (2) of s. 2 of the Open Spaces Act, 1887. See *Re Camden Town Burial Ground* (1888), 5 T. L. R. 311.

(*z*) This sub-section is taken from s. 3 of the Open Spaces Act, 1887.

(*a*) See note (*u*), *ante*, p. 2063.

or send by post a notice to any person known or believed by the local authority to be a near relative of any person whose death is recorded on any such tombstone or monument.

(4) In the case of a consecrated ground, no tombstone or monument shall be removed or its position changed without a licence or faculty from the bishop, and no application for such licence or faculty shall be made until the expiration of one month at least after the appearance of the last of such advertisements as aforesaid :

Provided that on an application for a licence or faculty nothing shall prevent the bishop from directing or sanctioning the removal or change of position of any tombstone or monument, if he is of opinion that reasonable steps have been taken to bring the intention to effect such removal or change of position to the notice of some person having a family interest in the tombstone or monument.

(5) A licence or faculty for the purposes of this section may be granted by the bishop of the diocese within which the consecrated burial ground is situate on the application of the local authority who have acquired any estate, interest, or control in or over the burial ground, and may be granted subject to such conditions and restrictions as to the bishop may seem fit (*b*).

Powers over open spaces and burial grounds already vested in local authority.

12. A local authority may exercise all the powers given to them by this Act respecting open spaces and burial grounds transferred to them in pursuance of this Act in respect of any open spaces and burial grounds of a similar nature which may be vested in them in pursuance of any other statute, or of which they are otherwise the owners (*c*).

Provision for compensation.

13. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting an open space or burial ground shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by anything done under this Act without compensation being made for the same ; and such compensation shall be paid by the local authority by whom the estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same were compensation for lands purchased and taken otherwise than by agreement or injuriously affected under the Lands Clauses Acts (*d*).

Power of county councils as to public walks or pleasure grounds.

14. A county council may purchase or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever (*e*).

Byelaws (*f*).

15.—(1) A local authority may, with reference to any open space or burial ground in or over which they have acquired any estate, interest, or control under this Act, make byelaws for the regulation thereof, and of the days and times of admission thereto, and for the preservation of order and prevention of nuisances therein, and may by such byelaws impose penalties recoverable summarily for the infringement thereof, and provide for the removal of any

(*b*) This sub-section is taken from the proviso to s. 5 of the Metropolitan Open Spaces Act, 1881.

(*c*) This section is taken from s. 11 of the Open Spaces Act, 1887.

(*d*) This section is taken from s. 9 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

See the Lands Clauses Consolidation Act, 1845, *ante*, p. 1311, and notes.

(*e*) This section is an extension of s. 12 of the Open Spaces Act, 1887.

(*f*) This section is taken from s. 1 of the Metropolitan Open Spaces Act, 1877, as extended by s. 6 of the Metropolitan Open Spaces Act, 1881, and by s. 5 of the Open Spaces Act, 1887.

As to existing byelaws, see s. 23 (a), *post*, p. 2068.

person infringing any byelaw by any officer of the local authority or police constable.

(2) All byelaws made under this Act by any local authority shall be made—

(a) in the case of a county council other than the London County Council, subject and according to the provisions of section sixteen of the Local Government Act, 1888; and

51 & 52 Vict. c. 41.

(b) in the case of the London County Council, subject and according to the provisions of sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, as modified with respect to parks and open spaces by the London Council (General Powers) Act, 1890, and the London County Council (General Powers) Act, 1898; and

18 & 19 Vict. c. 120. 53 & 54 Vict. c. ccxliii. 61 & 62 Vict. c. ccxxi.

(c) in the case of the Common Council of the City of London, subject and according to the Corporation of London (Open Spaces) Act, 1878; and

41 & 42 Vict. c. cxxvii.

(d) in the case of a council of a metropolitan borough, subject and according to the provisions of sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855; and

(e) in the case of a municipal borough or district or parish council, subject and according to the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*g*), and those sections shall apply to a parish council in like manner as if they were a local authority within the meaning of that Act, except that byelaws made by a parish council need not be under common seal.

38 & 39 Vict. c. 55.

(3) The trustees or other persons having the care and management of any open space, who in pursuance of this Act admit to the enjoyment of the open space any persons not owning, occupying, or residing in any house fronting thereon, shall have the same powers of making byelaws as are conferred on a committee of the inhabitants of a square by section four of the Town Gardens Protection Act, 1863 (*h*), and that section shall apply accordingly.

26 & 27 Vict. c. 13.

Power of local authorities to act jointly.

16. Any two or more local authorities may jointly carry out the provisions of this Act and may make any agreement on such terms as may be arranged between them for so doing and for defraying the expenses of the execution of this Act, and any local authority may defray the whole or any part of the expenses incurred by any other local authority in the execution of this Act (*i*).

Expenses of local authorities.

17. The expenses of a local authority incurred in the execution of this Act may be defrayed—

(a) in the case of a county council, out of the county fund (*k*);

(b) in the case of a metropolitan borough council, as expenses of that council;

(c) in the case of the council of a municipal borough or urban district, as part of the general expenses incurred in the execution of the Public Health Acts (*l*);

(d) in the case of a rural district council, as special expenses incurred in the execution of the Public Health Acts, and such expenses shall in accordance with the provisions of those Acts be charged to the contributory place, or apportioned among the contributory places, on account of which the expense was incurred (*m*);

(*g*) *Ante*, pp. 431—445.
(*h*) *Ante*, p. 1486.
(*i*) This section is taken from s. 7 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.
(*k*) This section is taken from s. 8 of the Open Spaces Act, 1887.
(*l*) See s. 207 of the P. H. A., 1875, *ante*, p. 468.
(*m*) See s. 229 of the P. H. A., 1875, *ante*, p. 509.

(e) in the case of a parish council, subject and according to the Local Government Act, 1894. 56 & 57 Vict. c. 73.

18. A local authority may borrow for the purposes of this Act in the case of a county council as for the purposes of the Local Government Act, 1888; in the case of a metropolitan borough council as for the purposes of the Metropolis Management Acts, 1855 to 1893; in the case of a municipal borough or urban or rural district council as for the purposes of the Public Health Acts (*n*); and in the case of a parish council as for the purposes of the Local Government Act, 1894. Borrowing.

SUPPLEMENTAL.

19. This Act shall not apply to— Savings.

(a) the royal parks; nor

(b) any land belonging to His Majesty in right of His Crown or of His Duchy of Lancaster; nor

(c) any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners of Works or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851; nor 14 & 15 Vict. c. 95.

(d) any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898; nor

(e) any land belonging to either of the honourable Societies of the Inner Temple and Middle Temple.

20. In this Act, unless the context otherwise requires.— Definitions.

The expression "open space" (*o*) means any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied:

The expression "common council of the city of London" means the mayor, aldermen, and commons of the city of London in common council assembled:

The expression "owner" (*p*)—

(a) used in relation to an open space (not being a burial ground), means any person in whom the open space is vested for an estate in possession during his life or for any larger estate;

(b) used in relation to a house, includes any person entitled to any term of years in the house;

(c) used in relation to a burial ground, means the person in whom the freehold of the burial ground is vested whether as appurtenant or incident to any benefice or cure of souls or otherwise:

The expression "occupier" (*q*), used in relation to a house, means the person rated to the relief of the poor in respect of the house:

The expression "burial ground" (*r*) includes any churchyard, cemetery,

(*n*) See ss. 233—244 of the P. H. A., 1875, *ante*, pp. 519—539.

(*o*) This definition differs slightly in wording from that contained in s. 1 of the Metropolitan Open Spaces Act, 1881, as amended by s. 2 of the Open Spaces Act, 1887, and s. 7 of the Open Spaces Act, 1890, but the effect appears to be the same.

(*p*) This definition is taken from Metropolitan Open Spaces Act, 1881, ss. 1, 2, and 3.

(*q*) This definition is taken from Metropolitan Open Spaces Act, 1881, ss. 2 and 3.

(*r*) This definition is taken from Metropolitan Open Spaces Act, 1881, s. 1.

The site of a church where intra-mural burial has taken place was held not to be ground which had been set apart for purposes of interment under the repealed definition (*Re Ecclesiastical Commissioners and New City of London Brewery Company's Contract*, [1895] 1 Ch. 702). But that definition was held to include ground set apart though never

or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment:

The expression "disused burial ground" (*s*) means any burial ground which is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or Order in Council:

The expression "building" (*s*) includes any temporary or movable building (*t*).

Repeal.

23. The Acts mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Provided that—

(a) Nothing in this repeal shall affect the validity or operation of any byelaw made under any enactment so repealed, but all such byelaws shall continue in force as if made under that Act, and may be revoked and altered accordingly; and

(b) Nothing in this repeal shall affect any order of a county council under any enactment repealed investing a parish council with the powers of the Open Spaces Acts, 1877 to 1890, and every parish council in respect of which such an order has before the commencement of this Act been made, shall be deemed to be a parish council invested with the powers of this Act by an order of the council of the county within which the parish is situate.

Commencement of Act.

24. This Act shall come into operation on the first day of January nineteen hundred and seven.

Short title.

25. This Act may be cited as the Open Spaces Act, 1906.

Section 23.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
40 & 41 Vict. c. 35.	The Metropolitan Open Spaces Act, 1877.	The whole Act.
44 & 45 Vict. c. 34.	The Metropolitan Open Spaces Act, 1881.	The whole Act.
50 & 51 Vict. c. 32.	The Open Spaces Act, 1887 .	The whole Act except so much of section four as amends the Disused Burial Grounds Act, 1884.
53 & 54 Vict. c. 15.	The Open Spaces Act, 1890 .	The whole Act.
62 & 63 Vict. c. 30.	The Commons Act, 1899 .	Section seventeen.

actually used for interments (*Re Ponsford and Newport District School Board*, [1894] 1 Ch. 454). See also s. 4 of the Open Spaces Act, 1887, *ante*, p. 1804, and *Re Bosworth and Gravesend Corporation*, cited in the note.

(*s*) This definition is identical with that contained in Open Spaces Act, 1887, s. 4, *ante*, p. 1804.

(*t*) Sections 21 and 22 apply to Ireland and Scotland only, and are therefore omitted.

BURIAL ACT, 1906.

(6 EDW. 7, C. 44.) (*u*)

An Act to amend the Law with respect to the consents required for the use of ground for Burials and the construction of Cemeteries.
[21st December 1906.]

1. The consent of the owner, lessee, and occupier of a dwelling-house to the use for burials of any ground used or appropriated for a burial ground or cemetery, mentioned in section nine of the Burial Act, 1855, shall not be and shall be deemed never to have been required in any case where the dwelling-house is or was begun to be erected or is or was erected or completed after any part of that ground has or had been so used or appropriated : Consents under 18 & 19 Vict. c. 128, s. 9.

Provided (*x*) that nothing in this section shall affect any rights acquired before the twenty-seventh day of November one thousand nine hundred and six under any judgment or order of a court of competent jurisdiction or under any agreement in writing, but if a dispute, one of the parties to which is a burial authority within the meaning of the Burial Act, 1900 (*y*), arises under such an agreement as to any such right, the dispute shall, if either party so requires, be determined by the Local Government Board either as arbitrators or otherwise at the option of the Board, in like manner as if it were a difference which the Board are authorised to determine under the Local Government Act, 1888, and section sixty-three and sub-sections (1) and (5) of section eighty-seven of that Act (*z*), as amended by any subsequent enactment (*a*), shall apply accordingly. 63 & 64 Vict. c. 15. 51 & 52 Vict. c. 41.

2. In section ten of the Cemeteries Clauses Act, 1847 (*b*), as incorporated with the Public Health (Interments) Act, 1879, " one hundred yards " shall be substituted for " two hundred yards " as the distance from a dwelling-house within which no part of a cemetery may be constructed without the consent of the owner, lessee, and occupier of the house. Consents under 10 & 11 Vict. c. 65. 42 & 43 Vict. c. 31.

3. This Act may be cited as the Burial Act, 1906, and may be cited with the Burial Acts, 1852 to 1900, as the Burial Acts, 1852 to 1906. Short title.

(*u*) This Act was passed in consequence of the decision in *Godden* v. *Hythe Burial Board*, [1906] 2 Ch. 270 ; 70 J. P. 285, to the effect that s. 9 of the Burials Act, 1855, prevented burials in a burial ground laid out since 1855 within 100 yards of a dwelling-house erected after the burial ground had been laid out without the consent of the owner, lessee, and occupier of such dwelling-house. A somewhat similar provision is contained in s. 10 of the Cemeteries Clauses Act, 1847, *ante*, p. 1442, with regard to cemeteries under that Act, and in s. 5 of the Cremation Act, 1902, *ante*, p. 2023, with regard to a crematorium.
(*x*) This proviso secured the rights of the plaintiff in *Godden* v. *Hythe Burial Board*, *supra*, under the judgment as well as similar rights acquired by agreement.
(*y*) See s. 11 of this Act, *ante*, p. 1981.
(*z*) See these enactments, *ante*, pp. 778, 781.
(*a*) See the Local Government (Determination of Differences) Act, 1896, *ante*, p. 1073.
(*b*) *Ante*, p. 1442, and compare s. 5 of the Cremation Act, 1902, *ante*, p. 2023.

FINANCE ACT, 1907.

(7 EDW. 7, c. 13.) (*c*)

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

[9th August 1907.]

PART II.

STAMPS.

Reduction of duty on loan capital issued for the purpose of the conversion or consolidation of existing capital. 62 & 63 Vict. c. 9.

10.—(1) Where it is shown to the satisfaction of the Commissioners that the loan capital issued (*d*) by any local authority, corporation, company, or body of persons, in respect of which a statement has, after the commencement of this Act, been delivered to the Commissioners under section eight of the Finance Act, 1899 (*e*), has been wholly or partly applied for the purpose of the conversion or consolidation of then existing loan capital, that authority, corporation, company, or body of persons, as the case may be, shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of two shillings for every hundred pounds of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of then existing loan capital; but this section shall not apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued.

(2) If it is represented to the Commissioners by any such local authority, corporation, company, or body of persons that loan capital about to be issued by them is to be applied, in whole or in part, for the purpose of the conversion or consolidation of existing loan capital, the Commissioners may postpone the time for the delivery of the statement and the payment of duty under section eight of the Finance Act, 1899 (*e*), until the capital has been issued or until such other time as the Commissioners think fit for the purpose of enabling the payment and repayment of the duty to take place as one transaction.

PART IV.

LOCAL TAXATION ACCOUNT (*f*).

Provision with respect to certain grants to local taxation accounts

17.—(1) The grants (*g*) specified in the Second Schedule to this Act shall instead of being charged in manner provided by the Acts relating to those

(*c*) Part of this Act is here inserted in consequence of the effect of s. 10 as regards the reduction of duty on loan capital issued by local authorities, and of s. 17, concerning payment of moneys to the local taxation account.

(*d*) Loan capital may be issued by urban district councils under s. 52 of the P. H. A., 1890, *ante*, p. 867.

(*e*) See this section set out, *ante*, p. 867.

(*f*) At the date of the passing of this Act certain proceeds of imperial taxation were paid by the Commissioners of Inland Revenue and of Customs into the "local taxation accounts," viz., (1) a proportion of the proceeds of Estate Duty, substituted for the original "probate duty" grant by s. 19 of the Finance Act, 1894; (2) the proceeds of the duties on "local taxation licences" (including motor car licences); (3) a portion of the

(*g*) For note (*g*) see next page.

grants, be charged on and paid out of the Consolidated Fund or the growing produce thereof, but in the case of grants which are payable during the continuance of any temporary Act only so long as that Act is continued.

(2) The proceeds of the local taxation (customs and excise) duties (*h*), and of the duties on local taxation licences (*i*) (including any duty charged under sub-section (1) of section eight of the Locomotives on Highways Act, 1896 (*k*)) 59 & 60 Vict. c. 36. payable under any Act in force at the commencement of this Act into any local taxation account, shall, instead of being paid into that account, be paid into the Exchequer, and there shall be paid into any such local taxation account out of the Consolidated Fund or the growing produce thereof a sum equal to the amount which would have been paid into that account as the proceeds of the duties if this Act had not passed (*l*).

(3) Where under this section or under any other enactment the amount of any sum paid into any local taxation account is made to depend on the proceeds of the duties on local taxation licences, those proceeds shall be calculated, in the event of any alteration of the rate of duties, as if the duties were at the rate in force at the commencement of this Act:

Provided that, if in any year owing to any alteration in the rate of duties the rate of any such duty is higher than the rate in force at the commencement of this Act, and the proceeds of that duty in that year as so calculated are less than the average proceeds of the duty for the three years ending the thirty-first day of March nineteen hundred and seven, the proceeds of the duty instead of being calculated as aforesaid shall be deemed to be the amount of those average proceeds, and the Commissioners of Inland Revenue shall give their certificates as to the sums ascertained to be the proceeds of those duties accordingly.

(4) In this section the expression "proceeds of duties" includes sums ascertained to be the proceeds of the duties, and any reference in any enactment to the duties or proceeds of the duties referred to in this section shall, so far as relates to the distribution of or mode of dealing with those duties or proceeds, be construed as a reference to the sums to be paid in lieu thereof under this section.

duties on spirits and beer, known as the "local taxation (customs and excise) duties" (Customs and Inland Revenue Act, 1890, s. 7); (4) "monopoly value" payments under s. 4 of the Licensing Act, 1904; and (5) a further portion of the proceeds of estate duty earmarked to meet grants payable under the Agricultural Rates Act, 1896. See further notes to s. 24 of the L. G. A., 1888, p. 754, *ante*. The present section altered the machinery with respect to the payment of such moneys into the local taxation account. All payments into it were for the future to be made out of the Consolidated Fund. The actual amounts to be paid in were to be the same as if the Act had not passed, subject to the provisions of sub-s. (3) as to the sum to be paid into the account in respect of the duties on local taxation licences in the event of an alteration in the rate of these duties. No alteration was made in the law relating to payments out of the local taxation account, and the L. G. B. have continued to make these payments to the councils in accordance with the existing arrangements. The section no longer applies to those duties which are now collected by councils under s. 6 of the Finance Act, 1908, *post*, p. 2084.

(*g*) *I.e.*, the first and fifth items referred to in the preceding note.

(*h*) See note (*f*), *supra*.

(*i*) See note (*f*), *supra*; in 1908 the duty of collecting some of these duties was transferred to the councils of counties and county boroughs, see Finance Act, 1908, s. 6, *post*, p. 2084. Under s. 4 of the Licensing Act, 1904, "monopoly value" payments were to be dealt with in the same way as the duties on "local taxation licences": s. 87 (1) of the Finance (1909-10) Act, 1910, directed them to be paid into the Exchequer; see also s. 14 (3) of the Licensing (Consolidation) Act, 1910.

(*k*) *I.e.*, the duties on motor cars, as to which see now s. 86 of the Finance (1909-10) Act, 1910.

(*l*) But the amount payable into the local taxation account in respect of the "local taxation (customs and excise) duties" is now stereotyped by s. 17 (1) of the Revenue Act, 1911, and the amount payable in respect of the "liquor licence" duties is stereotyped by s. 88 (1) of the Finance (1909-10) Act, 1910; see also s. 88 (2) thereof as to duties on carriage licences.

PART VII.

GENERAL.

30.—(2). . . .

54 & 55 Vict. c. 39. Part II. of this Act shall be construed together with the Stamp Act, 1891.

(3) This Act may be cited as the Finance Act, 1907.

SECOND SCHEDULE.

57 & 58 Vict. c. 30. (1) The estate duty grants paid under section nineteen of the Finance Act, 1894; and

59 & 60 Vict. c. 16. (2) The agricultural rates grant paid under section two of the Agricultural Rates Act, 1896; and

59 & 60 Vict. c. 37. (3) The Scottish Agricultural rates grant paid under section three of the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896.

BUTTER AND MARGARINE ACT, 1907.

(7 EDW. 7, c. 21.) (*m*)

An Act to make further provision with respect to the Manufacture, Importation, and Sale of Butter and Margarine and similar Substances.

[21st August 1907.]

Registration of factories and consignments. 50 & 51 Vict. c. 29. 62 & 63 Vict. c. 51.

1.—(1) The provisions of section nine of the Margarine Act, 1887 (*n*), as amended by section seven of the Sale of Food and Drugs Act, 1899 (*o*), relating to the registration (*p*) of manufactories of margarine, shall, with the necessary adaptations, apply to—

(a) Butter factories, that is to say, any premises on which by way of trade butter (*q*) is blended, reworked, or subjected to any other treatment, but not so as to cease to be butter; and

(b) Any premises on which there is manufactured any milk-blended butter, that is to say, any mixture produced by mixing or blending butter with milk or cream (other than condensed milk or cream) or on which there is carried on the business of a wholesale dealer in milk-blended butter.

(2) The provisions of section seven of the Sale of Food and Drugs Act, 1899 (*o*), relating to registers of consignments of margarine, shall, with the necessary adaptations, apply to consignments of milk-blended butter.

(3) Premises shall not be used as a butter factory if they form part of or communicate, otherwise than by a public street or road, with any other premises which are required to be registered under the Sale of Food and Drugs Acts or under paragraph (b) of this section, and if any premises are so used the occupier thereof shall be guilty of an offence under this Act (*r*), and the local authorities shall remove from the register of butter factories kept by them any premises used as a butter factory contrary to this provision:

(*m*) See the Sale of Food and Drugs Act, 1875, *ante*, p. 1577; the Sale of Food and Drugs Act Amendment Act, 1879, *ante*, p. 1691; the Margarine Act, 1887, *ante*, p. 1800; and the Sale of Food and Drugs Act, 1899, *ante*, p. 1965.

(*n*) *Ante*, p. 1803.

(*o*) *Ante*, p. 1970.

(*p*) Non-registration is an offence. For penalties, see s. 11, *post*. Regulations as to registration were made on December 28th, 1907: see Appendix II., *post*, p. 2387.

(*q*) Defined by s. 3 of the Margarine Act, 1887, *ante*, p. 1800. And as to percentage of water, see s. 4, *infra*.

(*r*) For penalties, see s. 11.

Provided that this sub-section shall not appply to premises which on the first day of January one thousand nine hundred and seven were being used as a butter factory and formed part of or communicated with premises which were registered under the Sale of Food and Drugs Acts, if and so long as the Board of Agriculture and Fisheries so direct.

Inspection of factories.

2 (*s*).—(1) Any officer of the Board of Agriculture and Fisheries or of the Local Government Board shall have power to enter at all reasonable times any premises registered under the Sale of Food and Drugs Acts or this Act, and to inspect any process of manufacture, blending, reworking, or treatment used therein, and to take samples for analysis of any butter (*t*), margarine (*u*), margarine-cheese (*x*), milk-blended butter, or of any article capable of being used in the manufacture, treatment, or adulteration of any such article as aforesaid.

(2) An officer of a local authority who is authorised to procure samples under the Sale of Food and Drugs Acts (*y*) shall, if specially authorised in that behalf by the local authority, have the like powers of entry, inspection, and sampling as regards any premises registered with the authority as a butter factory.

(3) If the Board of Agriculture and Fisheries have reason to believe—

(a) that on any unregistered premises there is carried on any process of manufacture, blending, reworking, or treatment or any wholesale dealing which under the Sale of Food and Drugs Acts or this Act cannot be carried on except on registered premises; or

(b) that on any premises butter (*t*) is by way of trade either made or stored, and that for the purposes of those Acts inspection is desirable,

the Board may specially authorise any officer of the Board to enter the premises, and in such case the officer shall have the like powers of entry, inspection, and sampling as if the premises were registered.

(4) Where under this section a special authority is required, an officer of the Board or of a local authority shall not be entitled to exercise any or his powers under this section unless, if so requested by or on behalf of the occupier of the premises to be entered, he produces his authority.

(5) Sub-section (2) of section seven of the Sale of Food and Drugs Act, 1899, is hereby repealed.

Prohibition of adulterants in butter factories.

3. (*z*) If any substance intended to be used for the adulteration of butter (*t*) is found in any butter factory, the occupier of the factory shall be guilty of an offence under this Act (*a*), and if any oil or fat capable of being so used is found it shall be deemed to be intended to be so used, unless the contrary is proved.

Limit of moisture in butter, margarine, and milk-blended butter.

4.—(1) If any butter which, when prepared for sale or consignment, contains more than sixteen per cent. of water (*b*) is in any butter factory,

(*s*) It is not necessary to observe the formalities prescribed by s. 14 of the Sale of Food and Drugs Act, 1875, on the taking of a sample under this section (*Monro* v. *Central Creamery Co., Ltd.*, [1912] 1 K. B. 578; 76 J. P. 131).

(*t*) See note (*q*), *supra*.

(*u*) Defined by s. 13, *post*, and as to percentage of water, see s. 4, *infra*.

(*x*) Defined by s. 25 of the Sale of Food and Drugs Act, 1899, *ante*, p. 1976.

(*y*) See s. 13 of the Sale of Food and Drugs Act, 1875, *ante*, p. 1584.

And as to obstruction, see s. 16 of the Sale of Food and Drugs Act, 1899, *ante*, p. 1972.

(*z*) The observance of the formalities prescribed by s. 14 of the Sale of Food and Drugs Act, 1875, is not a condition precedent to proceedings under this section (*Monro* v. *Central Creamery Co., Ltd.*, [1912] 1 K. B. 578; 76 J. P. 131).

(*a*) For penalties, see s. 11, *post*.

(*b*) See Regulations of the Board of Agriculture and Fisheries, 1902, *ante*, p. 1967.

or if any margarine which, when prepared for sale or consignment, contains more than sixteen per cent. of water is in any margarine factory, or if any such butter or margarine is consigned from a butter factory or margarine factory, the occupier of the factory or consignor, as the case may be, shall (whether the excess of moisture is due to adulteration or not) be guilty of an offence under this Act (*c*), unless the occupier or consignor proves to the satisfaction of the court that the butter or margarine was not made, blended, reworked, or treated in the factory.

(2) Any person who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any milk-blended butter (*d*) which contains more than twenty-four per cent. of water, shall be guilty of an offence under this Act (*c*).

Provisions as to the importation of butter, margarine, and milk-blended butter.

5.—(1) There shall be included in the list of articles importation of which is made an offence by section one of the Sale of Food and Drugs Act, 1899 (*e*), the following articles:—

(e) Butter containing more than sixteen per cent. of water (*f*);

(f) Margarine containing more than sixteen per cent. of water, or more than ten per cent. of butter-fat;

(g) Milk-blended butter containing more than twenty-four per cent. of water;

(h) Milk-blended butter, except in packages conspicuously marked with such name as may be approved by the Board of Agriculture and Fisheries for the purpose (*g*);

(j) Butter, margarine, or milk-blended butter which contains a preservative prohibited by any regulation made under this Act or an amount of a preservative in excess of the limit allowed by any such regulation;

and in the said section the words "adulterated or impoverished butter (other than margarine) or," and the words "butter or" shall be repealed.

(2) The maximum fine for an offence under the said section one, as amended by this section, shall, where the article in respect of which the offence was committed is butter, margarine, margarine-cheese, or milk-blended butter, be either such as is provided in the said section one, or, at the election of the Commissioners of Customs (*h*), a fine equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind but of the best quality were sold at or about the time of the importation.

(3) In any proceeding under the said section one as amended by this section the certificate of the principal chemist of the Government Laboratories, or, if the person who made the analysis be called as a witness, the evidence of that person, that an imported substance is margarine or milk-blended butter shall raise a presumption, until the contrary is proved, that the substance is margarine or milk-blended butter, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness unless he shall, at least three clear days before the return day, give notice

(*c*) For penalties, see s. 11, *post*.

(*d*) Defined s. 1 (*b*), *supra*.

(*e*) *Ante*, p. 1965. In proceedings by the Commissioners of Customs under that section, as extended by s. 5 (1) of the present Act, for the recovery of a penalty in respect of the importation into the United Kingdom of an article of food specified therein, the certificate of the analysis given by the principal chemist of the Government laboratories need not be in the form prescribed by s. 18 and the Schedule of the Sale of Food and Drugs Act, 1875 (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494).

(*f*) See Regulations of the Board of Agriculture and Fisheries, 1902, *ante*, p. 1967.

(*g*) See s. 9, *post*, p. 2075.

(*h*) The Commissioners must be the prosecutors. See s. 1 (2) of the Sale of Food and Drugs Act, 1899, *ante*, p. 1965.

to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction.

(4) Where a sample taken under the said section one as amended by this section is certified by the principal chemist to be margarine or milk-blended butter the Commissioners of Customs shall upon receiving the certificate forthwith notify the importer (*i*) thereof.

Regulations as to milk-solids in butter.

6. The power of making regulations under section four of the Sale of Food and Drugs Act, 1899 (*j*), shall extend to making regulations as to the proportion of any milk-solid other than milk-fat in any sample of butter or milk-blended butter.

Regulations as to preservatives.

7.—(1) The Local Government Board may, after such inquiry as they deem necessary, make regulations for prohibiting the use as a preservative of any substance specified in such regulations in the manufacture or preparation for sale of butter, margarine, or milk-blended butter, or for limiting the extent to which, either generally or as regards any particular substance or substances, preservatives may be used in the manufacture or preparation for sale of butter, margarine, or milk-blended butter.

(2) Any regulations made under this section shall be notified in the London, Edinburgh, or Dublin Gazette as the case may require, and shall also be made known in such other manner as the Local Government Board may direct.

(3) Any person who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any butter, margarine, or milk-blended butter which contains a preservative prohibited by a regulation under this section or an amount of a preservative in excess of the limit allowed by such regulation, shall be guilty of an offence under this Act (*k*).

Marking of wrappers, &c., used in connection with margarine.

8. If in any wrapper enclosing margarine, or on any package containing margarine, or on any label attached to a parcel of margarine (*l*), or in any advertisement or invoice of margarine a person dealing in margarine describes it by any name other than either "margarine," or a name combining the word "margarine" with a fancy or other descriptive name approved by the Board of Agriculture and Fisheries and printed in type not larger than and in the same colour as the word "margarine," he shall be guilty of an offence under this Act (*m*).

Regulation of sale of milk-blended butter.

9.—(1) Milk-blended butter shall be dealt with under such name or names as may be approved by the Board of Agriculture and Fisheries and under the conditions (*n*) applicable to the sale or description of margarine, with the substitution of an approved name (*o*) for the word "margarine," and with

(*i*) Defined by s. 1 (2) of the Sale of Food and Drugs Act, 1899, *ante*, p. 1965.

(*j*) *Ante*, p. 1967.

(*k*) See note (*u*), *ante*, p. 2073.

(*l*) This enactment was passed to meet the cases of *Tanner* v. *Dyball* (1906), 70 J. P. 279, 4 L. G. R. 506, and *Keeloma Dairy Co.* v. *Jones* (1906), 70 J. P. 533; 22 T. L. R. 535.

As to wrapper, package, or label, see s. 6 of the Margarine Act, 1887, *ante*, p. 1801; Section 6 of the Sale of Food and Drugs Act, 1899, as amending s. 6 of the Margarine Act, 1887, is not repealed by this section. It is therefore an offence, on a sale of a kind of margarine called "Karmo" (an approved fancy or descriptive word), to deliver it to the purchaser in a paper wrapper on which are printed the words "Karmo margarine" (*Williams* v. *Baker*, [1911] 1 K. B. 566; 75 J. P. 89). See also *Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139.

(*m*) For penalties see s. 11, *infra*.

(*n*) See s. 6 of the Margarine Act, 1887, *ante*, p. 1801, and s. 6 of the Sale of Food and Drugs Act, 1899, *ante*, p. 1969.

(*o*) See s. 10, *infra*.

this modification, that, in any case where, in order to comply with those conditions, the article is delivered to the purchaser in a wrapper, there shall, in addition to the approved name, be printed on the wrapper in such manner as the Board approve such description of the article, setting out the percentage of moisture or water (*p*) contained therein, as may be approved by the Board.

(2) Milk-blended butter, whenever forwarded by any public conveyance, shall be duly consigned under the name which, as respects the article consigned, has been approved by the Board under this section; subject to this modification, section eight of the Margarine Act, 1887 (*q*), shall apply to milk-blended butter in like manner as it applies to margarine.

(3) If any person deals with, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, or describes any milk-blended butter contrary to the provisions of this section, he shall be guilty of an offence under this Act (*r*), but any defence which would be a defence under section seven of the Margarine Act, 1887 (*s*), as respects margarine, shall be a defence under this section as respects milk-blended butter.

Names of margarine, &c.

10. A name shall not be approved by the Board of Agriculture and Fisheries for use in connection with margarine if it refers to or is suggestive of butter or anything connected with the dairy interest, nor shall such a name be approved as a name under which milk-blended butter may be imported or dealt with.

Penalties for offences.

11.—(1) Any person guilty of an offence under this Act shall be liable on conviction under the Summary Jurisdiction Acts for a first offence to a fine not exceeding twenty pounds and for a second offence to a fine not exceeding fifty pounds and for a third or any subsequent offence to a fine not exceeding one hundred pounds, and in cases where imprisonment can be inflicted under section seventeen of the Sale of Food and Drugs Act, 1899 (*t*), to such imprisonment as is by that section authorised.

(2) Section five of the Margarine Act, 1887 (which exempts employers from liability in certain cases), and section eleven of the same Act (which relates to the appropriation of penalties), and section twelve of the same Act (which relates to proceedings under that Act), shall apply to proceedings under this Act, with the substitution of references to this Act for references to the Margarine Act, 1887 (*u*).

Amendment of s. 8 of Margarine Act, 1887.

12. Except in the Administrative County of London, section eight of the Margarine Act, 1887 (*q*), shall have effect as if the words "inspector of weights and measures" were inserted after the word "nuisances."

Definition of "margarine."

13.—(1) For the purposes of the Sale of Food and Drugs Acts and this Act the expression "margarine" shall mean any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter.

(2) The above definition shall be substituted for the definition of margarine in the Margarine Act, 1887.

Short title, construction, and commencement.

14.—(1) This Act may be cited as the Butter and Margarine Act, 1907, and shall be construed as one with the Sale of Food and Drugs Act, 1899, and

(*p*) See s. 4 (2), *ante*, p. 2074.
(*q*) *Ante*, p. 1803.
(*r*) For penalties, see s. 11, *infra*.
(*s*) *Ante*, p. 1802. See also s. 20 of the Sale of Food and Drugs Act, 1899, *ante*, p. 1974.
(*t*) *Ante*, p. 1972.
(*u*) See the sections here referred to, *ante*, pp. 1801, 1804.

may be cited with the Sale of Food and Drugs Acts as the Sale of Food and Drugs Acts, 1875 to 1907.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

ADVERTISEMENTS REGULATION ACT, 1907.

(7 EDW. 7, c. 27.) (*x*)

An Act to authorize Local Authorities to make Byelaws respecting the Exhibition of Advertisements. [28th August 1907.]

1. This Act may be cited as the Advertisements Regulation Act, 1907. Short title.

2. Any local authority may make byelaws— Local authorities to have power to make byelaws for regulation of advertisements.

(1) For the regulation and control of hoardings and similar structures used for the purpose of advertising when they exceed twelve feet in height:

(2) For regulating, restricting, or preventing the exhibition of advertisements in such places and in such manner, or by such means, as to affect injuriously the amenities of a public park or pleasure promenade, or to disfigure the natural beauty of a landscape:

Provided that a local authority in making byelaws under this section shall provide for the exemption from the operation of such byelaws of any hoardings and similar structures in use for advertising purposes at the time of the making of the byelaws, and of any advertisement exhibited at that time, for such period, not being less than five years from that time, as they may think fit.

3.—(1) A byelaw made under this Act shall not have any effect until confirmed by the Secretary of State, and shall not be so confirmed until at least thirty days after the local authority have published it in such manner as the Secretary of State may by general or special order direct. Byelaws to be confirmed by Secretary of State.

(2) The Secretary of State shall, before confirming any byelaw, consider any objections to it which may be addressed to him by persons affected or likely to be affected thereby.

(3) The Secretary of State may, before confirming any byelaw, order that a local inquiry be held with respect to the byelaw or with respect to any objections thereto. The person holding any such inquiry shall receive such remuneration as the Secretary of State may determine, and that remuneration and the expenses of the local inquiry shall be paid by the local authority making the byelaw.

(4) Byelaws made under this Act may apply either to the whole of the area of the local authority, or to any specified part thereof.

(5) Byelaws made by a county council shall not be of any force or effect within any borough or urban district the council of which is a local authority under this Act:

(*x*) Advertising stations are rateable under the Advertising Stations Rating Act, 1889 (see *ante*, pp. 482, 1435), and local authorities have extensive powers as to requiring hoardings to be set up. (See s. 34 of the P. H. A., 1890, *ante*, p. 850, s. 80 of the Towns Improvement Clauses Act, 1847, *ante*, p. 1434, and s. 32 of the P. H. A., 1907, *ante*, p. 1116).

This Act, however, is directed to a different purpose, and gives power to make byelaws for preventing the disfigurement of places by advertisements.

Such byelaws are not subject to the provisions of ss. 182—188 of the P. H. A., 1875, *ante*, pp. 431—446 but require confirmation by a Secretary of State.

(6) The production of a copy of any byelaw certified by a person purporting to be the clerk of the local authority to be a true copy shall, until the contrary is proved, be evidence of the byelaw and of the due making thereof, and, if it is so stated in the certificate, of the byelaw having been duly confirmed.

Expenses.

4. Any expenses incurred by a local authority in England or Ireland in carrying into effect the provisions of this Act or any byelaw made thereunder shall be defrayed in the case of a county out of the county fund, in the case of the city of London out of the consolidated rate of that city, in the case of a borough out of the borough fund or borough rate, and in the case of an urban district as part of the general expenses incurred in the execution of the Public Health Acts (*y*) : Provided that a county council shall not raise any sum on account of their expenses under this Act within any borough or urban district the council of which is a local authority under this Act.

Powers of Act to be in addition to any existing powers.

5. The powers and provisions of this Act shall be deemed to be in addition to and not in derogation of any powers and provisions of any local Act, and any powers of making byelaws under any general Act and any such powers and provisions may be exercised and enforced in the same manner as if this Act had not been passed (*a*).

6. [*Application to Scotland.*]

Definition.

7. For the purposes of this Act the expression "local authority" means—

(1) Within the city of London, the mayor, aldermen and commons of that city, in common council assembled :

(2) Within any municipal borough in England, the council of that borough :

(3) Within any royal, parliamentary, or police burgh in Scotland, the town council :

(4) Within any urban district in England containing a population according to the last census for the time being of over ten thousand, and within any urban district in Ireland containing a population according to the last census for the time being of over five thousand, the council of that district :

(5) Elsewhere in England, Scotland, or Ireland, the county council.

Enforcement of byelaws of London County Council.

8. It shall be the duty of the metropolitan borough council to enforce within its own area any byelaws made by the London County Council under paragraph (1) of section two of this Act.

9. [*Application to Ireland.*]

Penalties

10. If any person acts in contravention of or fails to comply with any byelaw made under this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds, and to a penalty not exceeding twenty shillings for every day during which the offence is continued after his conviction thereof (*b*).

(*y*) See s. 207 of the P. H. A., 1875, *ante*, p. 468.

(*a*) *Cf.* s. 341 of the P. H. A., 1875, *ante*, p. 662. It would seem that a person could not be punished twice for the same offence both under a local Act and under a byelaw under this Act.

(*b*) Apparently any member of the public may prosecute. (See *R.* v. *Stewart*, [1896] 1 Q. B. 300; 60 J. P. 356; *Kenealy* v. *O'Keeffe*, [1901] 2 I. R. 39; *Connor* v. *Butler*, [1902] 2 I. R. 569; *Allman* v. *Hardcastle* (1903), 67 J. P. 440; 89 L. T. 553.)

No right of appeal is expressly given, and therefore no appeal will lie to Quarter Sessions

FACTORY AND WORKSHOP ACT, 1907.

(7 EDW. 7, c. 39.) (*c*)

An Act to amend the Factory and Workshop Act, 1901, *with respect to Laundries, and to extend that Act to certain Institutions and to provide for the inspection of certain premises.* [28th August 1907.]

LAUNDRIES.

1. The Factory and Workshop Act, 1901 (which Act, as amended by any subsequent enactment, including this Act, is hereinafter referred to as the principal Act), shall, subject to the provisions of this Act, apply to laundries as if at the end of Part II. of the Sixth Schedule (*d*) to that Act, enumerating non-textile factories and workshops, the following paragraph were added :— Application of 1 Edw. 7, c. 22, to laundries.

"(29) Laundries carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business (*e*) or incidentally to the purposes of any public institution (*f*)."

2. [*Hours of employment of women and young persons in laundries.*] (*g*)

3. In every laundry— Special regulations to be complied with in laundries.

(a) If mechanical power is used, a fan or other efficient means shall be provided, maintained, and used for regulating the temperature (*h*) in every ironing room, and for carrying away the steam in every washhouse ;

(b) All stoves for heating irons must be sufficiently separated from any ironing room or ironing table, and gas irons emitting any noxious fumes must not be used ; and

(c) The floors must be kept in good condition and drained in such manner as will allow the water to flow off freely (*i*).

A laundry in which there is a contravention of any of these provisions shall be deemed to be a factory or workshop not kept in conformity with the principal Act (*k*).

4. Subsection (2) of section one hundred and fourteen (*l*) of the principal Act (which provides that certain domestic workshops are not to be deemed workshops within the meaning of the Act) shall apply to laundries as if for the words "altering, repairing, ornamenting, or finishing of any article" Application of provisions as to domestic workshops.

(*R.* v. *London JJ.*, [1900] 1 Q. B. 438 ; 64 J. P. 357), but there may be an appeal by case stated under s. 2 of the S. J. A., 1857, and s. 33 of the S. J. A., 1879.

Penalties must be dealt with as unappropriated penalties under s. 31 of the S. J. A., 1848, and s. 11 of the Criminal Justice Administration Act, 1851. Receipts for penalties are exempt from stamp duty. (See the Revenue Act, 1898, s. 8.)

(*c*) See the Factory and Workshop Act, 1901, *ante*, p. 1988.

(*d*) *Ante*, p. 2019.

(*e*) A laundry in which table-linen, sheets and blankets are washed and which is carried on by a hotel proprietor is ancillary to the hotel business, although no visitors' washing is done there (*Sadler* v. *Roberts* (1911), 75 J. P. 342 ; 105 L. T. 106.)

(*f*) A home for orphan children was held to be a public institution in *Seal* v. *British Orphan Asylum* (1911), 75 J. P. 152 ; 104 L. T. 424 ; so was an institution maintained by the voluntary subscriptions of Freemasons, although no public appeal for funds was made (*Royal Masonic Institution Trustees* v. *Parkes*, [1912] 3 K. B. 212 ; 76 J. P. 218).

(*g*) This section does not concern sanitary authorities.

(*h*) The provisions of this section are additional to those of ss. 6 and 7 of the principal Act, *ante*, p. 1991, as regards temperature and ventilation.

(*i*) The provisions of this section are additional to those of s. 8 of the principal Act, *ante*, p. 1991, as regards drainage of floors.

(*k*) See s. 135 of that Act, *ante*, p. 2009.

(*l*) *Ante*, p. 2005.

there were substituted the words "the altering, repairing, ornamenting, washing, cleaning, or finishing of any article."

Institutions.

Application of Factory and Workshop Acts to certain institutions.

5.—(1) Where in any premises forming part of an institution carried on for charitable or reformatory purposes, and not being premises subject to inspection by or under the authority of any Government Department, any manual labour is exercised in or incidentally to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of articles not intended for the use of the institution, the provisions of the principal Act shall, subject to the provisions of this Act, apply to those premises notwithstanding that the work carried on therein is not carried on by way of trade or for the purposes of gain, or that the persons working therein are not working under a contract of service or apprenticeship.

(2) If in any institution to which this section applies the persons having the control of the institution (hereinafter referred to as the managers) satisfy the Secretary of State that the only persons working therein are persons who are inmates of and supported by the institution, or persons engaged in the supervision of the work or the management of machinery, and that such work as aforesaid is carried on in good faith for the purposes of the support, education, training, or reformation of persons engaged in it, the Secretary of State may by order direct that so long as the order is in force the principal Act shall apply to the institution subject to the following modifications:—

(a) The managers may submit for the approval of the Secretary of State a scheme for the regulation of the hours of employment, intervals for meals, and holidays of the workers, and of the education of children, and, if the Secretary of State is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of the principal Act, the Secretary of State may approve the scheme, and upon the scheme being so approved the principal Act shall, until the approval is revoked, apply as if the provisions of the scheme were substituted for the corresponding provisions of the principal Act; any scheme when so approved shall be laid as soon as possible before both Houses of Parliament, and if either House, within the next forty days after such scheme has been laid before that House, resolve that the scheme ought to be annulled, the scheme shall, after the date of the resolution, be of no effect without prejudice to the validity of anything done in the meantime thereunder, or to the making of any new scheme;

(b) The medical officer of the institution (if any) may, on the application of the managers, be appointed by the chief inspector of factories to be the certifying surgeon for the institution;

(c) The provisions of section one hundred and twenty-eight of the principal Act as to the affixing of an abstract of the principal Act and of notices shall not apply, but amongst the particulars required to be shown in the general register there shall be included the prescribed particulars of the scheme, or where no scheme is in force the prescribed particulars as to hours of employment, intervals for meals, and holidays, and education of children, and other matters dealt with in the principal Act;

(d) In the case of premises forming part of an institution carried on for reformatory purposes, if the managers of the institution so give notice to the chief inspector of factories, an inspector shall not, without the consent of the managers or of the person having charge

of the institution under the managers, examine an inmate of the institution save in the presence of one of the managers or of such person as aforesaid :

Provided that the Secretary of State, on being satisfied that there is reason to believe that a contravention of the principal Act is taking place in any such institution, may suspend the operation of this provision as respects that institution to such extent as he may consider necessary ;

(e) The managers shall not later than the fifteenth day of January in each year send to the Secretary of State a correct return in the prescribed form, specifying the names of the managers and the name of the person (if any) having charge of the institution under the managers, and such particulars as to the number, age, sex, and employment of the inmates and other persons employed in the work carried on in the institution as the Secretary of State may require, and shall, if any requirement of this paragraph is not complied with, be liable to a fine not exceeding five pounds.

Supplemental.

6. Where in any premises which are subject to inspection by or under the authority of any Government department any manual labour is exercised, otherwise than for the purposes of instruction, in or incidental to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of any article, and the premises do not constitute a factory or workshop by reason that the work carried on therein is not carried on by way of trade or for the purposes of gain, or by reason that the persons employed in the work are not working under a contract of service or apprenticeship, the Secretary of State may arrange with the department that the premises shall, as respects the matters dealt with by the principal Act, be inspected by an inspector appointed under that Act, and where such an arrangement is made, inspectors appointed under the principal Act shall have, as respects such matters as aforesaid, the like right of entry and inspection as is conferred on inspectors of the department concerned. Inspection of certain premises

7.—(1) This Act may be cited as the Factory and Workshop Act, 1907, and shall be construed as one with the Factory and Workshop Act, 1901, and the Factory and Workshop Act, 1901, and this Act may be cited together as the Factory and Workshop Acts, 1901 and 1907. Short title, construction, commencement, and repeal.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

(3) Section one hundred and three of the Factory and Workshop Act, 1901, is hereby repealed.

NOTIFICATION OF BIRTHS ACT, 1907.

(7 EDW. 7, c. 40.)

An Act to provide for the early Notification of Births. [28th August 1907.]

Provisions for earlier notification of births.

1. The provisions of this section shall have effect in the area of any local authority (*m*) in which this Act is adopted (*n*) by that authority in accordance with the provisions of this Act—

(1) In the case of every child born in an area in which this Act is adopted it shall be the duty of the father of the child, if he is actually residing in the house where the birth takes place at the time of its occurrence, and of any person in attendance upon the mother at the time of, or within six hours after, the birth, to give notice in writing of the birth to the medical officer of health of the district in which the child is born, in manner provided by this section.

(2) Notice under this section shall be given by posting a prepaid letter or postcard addressed to the medical officer of health at his office or residence, giving the necessary information of the birth within thirty-six hours after the birth, or by delivering a written notice of the birth at the office or residence of the medical officer within the same time; and the local authority shall supply without charge addressed and stamped postcards containing the form of notice to any medical practitioner or midwife residing or practising in their area, who applies for the same.

(3) Any person who fails to give notice of a birth in accordance with this section shall be liable on summary conviction to a penalty not exceeding twenty shillings: (*o*) Provided that a person shall not be liable to a penalty under this provision if he satisfies the court that he had reasonable grounds to believe that notice had been duly given by some other person (*p*).

(4) The notification required to be made under this Act shall be in addition to and not in substitution for the requirements of any Act relating to the registration of births (*q*); and any registrar of births and deaths whose sub-district or any part thereof is situate within any area in which this Act is adopted shall at all reasonable times have access to notices of births received by the medical officer of health under this Act, or to any book in which those notices may be recorded, for the purpose of obtaining information concerning births which may have occurred in his sub-district.

(5) This section shall apply to any child which has issued forth from its mother after the expiration of the twenty-eighth week of pregnancy, whether alive or dead.

(6) Any expenses incurred by a local authority in the execution of this Act shall be paid as part of the expenses of that authority in the

(*m*) Defined s. 2 (4), *infra*. The L. G. B. favour its adoption for separate districts and not for a whole county. The Board will not, as a rule, approve its adoption unless steps are taken to carry out its ultimate object, viz., the giving of advice and instruction to persons in charge of infants. See a circular of September 27th, 1907 (L. G. R., 1907, Part III., p. 169).

(*n*) For procedure see s. 2, *infra*.

(*o*) As to appeals, appropriation of penalties and receipts, see note (*b*), *ante*, p. 2078.[1]

(*p*) That is, by another person bound to give the notice. Otherwise the notice is not "duly" given.

(*q*) See Births and Deaths Registration Acts, 1836—1874, enumerated in 37 & 38 Vict. c. 88.

execution of the Acts relating to public health, and in the case of a rural district council shall be paid as general expenses (*r*).

2.—(1) A local authority may by resolution adopt this Act in their area, and the provisions set out in the schedule to this Act shall have effect with respect to the resolution of adoption. Adoption of Act and definition of local authority.

(2) A resolution of adoption shall not take effect until the consent of the Local Government Board has been obtained thereto.

(3) It shall be the duty of any local authority by whom this Act is adopted, as soon as the consent of the Local Government Board is given to the resolution of adoption, to bring the provisions of this Act to the attention of all medical practitioners and midwives practising in their area.

(4) In this Act, the expression " local authority " means the council of a borough (including the council of a metropolitan borough and the mayor, aldermen, and commons of the city of London in common council assembled), and the council of an urban or a rural district, and the council of a county (other than the county of London) who may adopt the Act either for their whole county or for any county district therein :

Provided that—

(a) where the Act is adopted by the council of a county the county medical officer of health shall be substituted for the medical officer of health of the district, and the expenses of the execution of the Act shall be paid as general county expenses or special county expenses, as the case requires ; and

(b) if, where the Act has been adopted by the council of a county for any county district, the council of the district, or, where the Act has been adopted by the council of a county district for their district, the council of the county, subsequently apply to the Local Government Board to be made the authority for the purposes of this Act, the Board may, if they think fit, make an order declaring that the Act shall take effect as if it had been adopted by the council of the county district instead of the council of the county, or by the council of the county instead of the council of the county district, as the case may be, and on any such order being made the Act shall take effect in accordance with the order.

(5) In London, the medical officer of health of every metropolitan borough (including the city of London) in which this Act is in force for the time being shall send weekly to the London County Council, in a form prescribed by the Local Government Board, a list of all notices of birth received by him under this Act during the past week.

3. The Local Government Board may by order declare that this Act shall be in force in the area of any local authority who have power to adopt the Act, although it has not been so adopted, if they think it expedient, having regard to the circumstances of the area, and in that case the order of the Local Government Board shall have the same effect for the purpose as a resolution of adoption duly passed by the local authority of the area and assented to by the Local Government Board. Power of Local Government Board to put Act in force in the area of any local authority.

4. [*Application to Scotland.*]

5. [*Application to Ireland.*]

6. This Act may be cited as the Notification of Births Act, 1907. Short title

(*r*) See as to urban districts, s. 207 of the P. H. A., 1875, *ante*, p. 468, and as to rural districts, s. 229 of the same Act, *ante*, p. 509.

Section 2.

SCHEDULE.

RESOLUTION OF ADOPTION.

1. A resolution of adoption must be passed at a meeting of the council.
2. One calendar month at least before the meeting of the council special notice of the meeting and of the intention to propose the resolution shall be given to every member of the council.
3. A resolution of adoption after being passed shall be published by advertisement in some one or more newspapers circulating within the area of the council by whom the resolution is passed, and otherwise in such manner as the council thinks sufficient for giving notice thereof to all persons interested.
4. A copy of the resolution of adoption shall be sent to the Local Government Board.
5. The resolution of adoption shall come into operation at such time, not less than one month after the first publication of the advertisement, as may be fixed by the Local Government Board.

THE FINANCE ACT, 1908.

(8 EDW. 7, C. 16.)

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the Financial Arrangements of the year. [1st August 1908.]

* * * * *

PART III.

LOCAL TAXATION LICENCES.

Collection of duties on certain local taxation licences by county councils.

6.—(1) The power to levy the duties on local taxation licences to which this section applies shall, as from the date to be fixed by Order in Council under this section, be transferred (*s*) in England and Wales to county councils, and section seventeen of the Finance Act, 1907 (*t*), shall, as from the date of the transfer, cease to apply to or in respect of any such duties or the proceeds thereof.

(2) His Majesty may, by Order in Council, fix the date of the transfer under this section, and make any such further provisions as it appears necessary or expedient to make in order to give full effect to the transfer, and may make provision for the furnishing by county councils of returns to the Local Government Board as to the amounts levied under the power transferred by this section.

The transfer under this section shall not affect any equitable adjustment respecting the distribution of the proceeds of the local taxation licences made under the Local Government Act, 1888, or otherwise, but provision may be made by Order in Council under this section for any alteration which it appears necessary or expedient to make in consequence of the transfer in the procedure for making any payments, or otherwise giving effect to any such adjustment.

Sub-sections (3) (4) and (5) of section twenty of the Local Government Act, 1888, and any other provisions of that Act relating to the levy of the duties on local taxation licences by county councils shall, as respects the

(*s*) The transfer contemplated by this section was effectuated by an Order in Council, dated October 19th, 1908. See the Order, a Circular of the L. G. B., and a memorandum of the Inland Revenue Commissioners at 6 L. G. R., Part III., pp. 169 *et seq.*

(*t*) See *ante*, p. 2070.

duties to which this section applies, have effect as if the power to levy those duties had been transferred under subsection (3) of section twenty of that Act.

(3) When the transfer under this section takes effect there shall be charged on and paid annually out of the Consolidated Fund or the growing produce thereof to the Local Taxation Account a sum of forty thousand pounds (*u*), and the sum so paid shall be distributed amongst the county councils in England and Wales in proportion to the proceeds of the duties to which this section applies collected in each county during the preceding year.

(4) The duties on local taxation licences to which this section applies are the duties on licences to deal in game, licences for dogs, killing game, guns, carriages (including duties charged under subsection (1) of section eight of the Locomotives on Highways Act, 1896) (*x*), armorial bearings, and male servants:

Provided that if the rate of any such duty is altered, that duty shall, unless Parliament makes provision to the contrary, cease to be a duty to which this section applies (*y*).

(5) The expressions "county" and "county council" in this section respectively include a county borough and the council of a county borough.

THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1908.

(8 EDW. 7, C. 36) (*z*).

An Act to consolidate the Enactments with respect to Small Holdings and Allotments in England and Wales. [1st August 1908.]

PART I.

SMALL HOLDINGS (*a*).

* * * * *

PART II.

ALLOTMENTS.

PROVISION OF ALLOTMENTS.

Duty of certain councils to provide allotments.

23.—(1) If the council of any borough, urban district, or parish (*b*) are of opinion that there is a demand for allotments for the labouring population (*c*)

(*u*) This payment was intended to meet the cost of collection.

(*x*) *I.e.*, duties on motor cars, as to which see now the Finance (1909—10) Act, 1910, s. 86, *post*, p. 2132.

(*y*) The duties on motor cars were increased by the section last referred to; but nevertheless all carriage (including motor car) licences are still within the present section by virtue of the Finance (1909—10) Act, 1910, s. 88 (2), *post*. The councils, however, do not benefit by the increase in the duties (see *ibid.*).

(*z*) This Act re-enacted without substantial variation the group of statutes which it repealed: see Schedule III., *post*.

(*a*) Sanitary authorities are not concerned with the law as to small holdings, except in so far as they may make representations to the Small Holdings Commissioners, and may be required by the Commissioners to give information and assistance (s. 3 (2)), and in so far as a county council may delegate its powers in the matter to such an authority (s. 18).

See the Small Holdings Act, 1910, as to compensation to tenants whose land is taken from them for the purpose of small holdings, and *In re Evans and the Glamorgan C. C.* (1912), 76 J. P. 468.

(*b*) In a rural parish having no parish council, the parish meeting has the same powers (s. 61 (4)). Prior to 1907, the district council was in a rural parish the authority for executing the Allotments Acts. The Small Holdings and Allotments Act, 1907, transferred the powers and duties to parish councils and meetings, and made provision for the necessary transfer and adjustment of property and liabilities (s. 20 (2), (3), (6)).

(*c*) The L. G. B. state that they are advised that the term "labouring population"

in the borough, urban district, or parish, and that such allotments cannot be obtained at a reasonable rent (*d*) and on reasonable conditions by voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same, the council shall (*e*) provide a sufficient number of allotments, and shall let such allotments to persons (*f*) belonging to the labouring population resident in the borough, district, or parish, and desiring to take the same.

(2) On a representation in writing to the council of any borough, urban district, or parish, by any six registered parliamentary electors or ratepayers resident in the borough, urban district, or parish, that the circumstances of the borough, urban district, or parish are such that it is the duty of the council to take proceedings under this Part of this Act therein, the council shall take such representation into consideration.

(3) For the purpose of this section, the expression "reasonable rent" means the rent, exclusive of rates, taxes, and tithe rentcharge, which a person taking an allotment might reasonably be expected to pay, taking one year with another, to a landlord, having regard to the value of similar land in the neighbourhood, to the extent and situation of allotment, to the expenses of the adapting the land to the purposes of the allotment, and to the repairs and other outgoings payable by the landlord, and to the cost and risk of collecting the rents of and otherwise managing allotments.

(4) The duty of a council to provide allotments under this Act shall not include the duty of providing allotments exceeding one acre in extent (*g*).

Duty of county councils to act in default of district and parish councils.

24.—(1) It shall be the duty of a county council to ascertain the extent to which there is a demand for allotments in the several urban districts (other than boroughs) and rural parishes in the county, or would be a demand if suitable land were available, and the extent to which it is reasonably practic-

means the population that, in substance, makes a livelihood by manual labour; that it includes all such as smiths, ploughmen, carpenters, artificers, workers in factories, and others whose work is in the main manual, though knowledge and skill also be required; but that the expression does not include those whose work is in the main a matter of knowledge and skill, though manual work is also required, such as nurses or cooks, postmasters, clerks, or tradesmen in general. The Board further state that they are advised that the expression "persons belonging to the labouring population" includes not only those who labour themselves, but those really belonging to the class, though personally they may not labour—for example, the widow of a labourer.

The Board of Agriculture and Fisheries have also issued a memorandum upon the subject in the following terms: "The Allotments Acts do not contain any definition of the expression 'labouring population,' and the Board have no authority to define its meaning. It might reasonably be held to include only those persons whose main occupation involved manual labour, and therefore not tradesmen, licensed victuallers, or employers of labour, or persons such as clerks, whose main occupation is manual work but not manual labour. In dealing with field gardens and similar small allotments sanitary authorities seem to have sometimes adopted a wider construction, and let the gardens or allotments to all persons of the working classes to whom they would be of real value, and, in the absence of any authoritative decisions, councils would seem justified in doing this, but in the case of applications exceeding one acre, any question as to whether the applicants come under the statutory description can be avoided if the applications are referred to the county council to be dealt with under the Small Holdings Acts, and in doubtful cases the Board suggest that a council should adopt this course."

See also a definition of "working classes" in the Schedule to the Housing of the Working Classes Act, 1903, *ante*, p. 1092.

(*d*) As to the term "reasonable rent," see sub-s. (3).

(*e*) "Shall" provide, but see ss. 25 (3), 27, *post*, as to financial considerations.

(*f*) Under s. 28, *post*, the council may make rules as to persons eligible to be tenants of allotments. Apparently a person accepted as tenant must at the time be resident within the area, but may retain his allotment if he subsequently removes to a place not more than one mile outside the area (s. 30 (2), *post*).

(*g*) A holding exceeding one acre is within the term "small holding" (s. 61). As to such the council have no duty and may refer applicants to the county council; nevertheless they may provide allotments up to five acres (see s. 27 (3), *post*).

able, having regard to the provisions of this Act, to satisfy any such demand, and for that purpose to co-operate with such authorities, associations, and persons as they think best qualified to assist them, and take such other steps as they think necessary.

(2) The county council, if satisfied that the circumstances are such that land for allotments should be acquired by them under this section, shall pass a resolution to that effect, and thereupon the powers and duties of the district or parish council under the provisions of this Act relating to allotments shall be transferred from that council to the county council, and the county council, in substitution for that council, shall proceed to acquire land in accordance with this Act, and otherwise execute this Act in the district or parish :

Provided that this section shall not affect the property in, or any powers or duties of the district or parish council in relation to, any land which, before the passing of the resolution, was acquired by the district or parish council under this Act, or any enactment repealed by this Act.

(3) Where the powers of the district or parish council are, by virtue of this section, transferred to the county council, the following provisions shall have effect :—

(a) The provisions of this Act relating to allotments shall apply with the modifications necessary for giving effect to this section :

(b) The county council may borrow for the purposes of those provisions subject to the conditions, in the manner, and on the security of the rate, subject to, in, and on the security of which the district or parish council might have borrowed under those provisions. The council shall have power to charge the said rate with the repayment of the principal and interest of the loan, and the loan with the interest thereon shall be repaid by the district or parish council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that rate by the district or parish council :

(c) The county council shall keep separate accounts of all receipts and expenditure under this section :

(d) All sums received by the county council in respect of any land acquired under this section or the corresponding provision of any enactment repealed by this Act (*h*), otherwise than from any sale or exchange (*i*), in so far as they are not required for the payment of expenses incurred by them in respect of such land, shall be paid to the district or parish council :

(e) The county council may delegate to the district or parish council any powers under this Act relating to the management of the allotments, and the letting and use thereof, and the recovery of the rent and of possession thereof ; and, subject to the terms of the delegation, all expenses and receipts arising in the exercise of the powers so delegated shall be paid and dealt with as expenses and receipts of the district or parish council under this Act :

(f) The county council, on the request of the district or parish council, may, by order under their seal, transfer to that council all or any of the powers, duties, property, and liabilities vested in and imposed on the council by virtue of this section or the corresponding provision of any enactment repealed by this Act, as regards the district or parish, and the property so transferred shall be deemed to have been acquired by that council under this Act, and that council shall act accordingly.

(*h*) *E.g.*, ss. 2, 4 of the repealed Allotments Act, 1890.

(*i*) As to proceeds of sales and exchanges, see s. 32 (2), *post*.

(4) If the Board (*j*) are, in relation to any urban district (other than a borough) or rural parish, satisfied, after holding a local inquiry at which the county council and the council of the district or parish and such other persons as the person holding the inquiry may in his discretion think fit to allow, shall be permitted to appear and be heard, that the county council have failed to fulfil their obligations under this section, the Board may by order transfer to the Commissioners (*k*) all or any of the powers of the county council under this section in relation to the district or parish, and this section shall apply as if references to the Commissioners were substituted for references to the county council and with such other adaptations as may be made by the order.

POWERS OF COUNCILS IN RELATION TO THE PROVISION OF ALLOTMENTS.

Acquisition of land for purpose of Act.

25.—(1) The council of a borough, urban district, or parish may, for the purpose of providing allotments, by agreement purchase or take on lease land, whether situate within or without their borough, district, or parish (*l*).

(2) If a council are unable to acquire by agreement, and on reasonable terms, suitable land for the purpose of allotments, they may acquire land compulsorily in accordance with the provisions of this Act relating to compulsory acquisition of land (*m*).

(3) A council shall not under this Act acquire land for allotments save at such price or rent that in their opinion all expenses, except such expenses as are incurred in making roads (*n*) to be used by the public, incurred by them in acquiring the land and otherwise in relation to the allotments, may reasonably be expected to be recouped out of the rents obtained in respect thereof.

Improvement and adaptation of land for allotments.

26.—(1) The council of a borough, urban district, or parish may improve any land acquired by them for allotments and adapt the same for letting in allotments, by draining, fencing, and dividing the same, acquiring approaches,

(*j*) *I.e.*, the Board of Agriculture and Fisheries. As to local inquiries by the Board, see s. 57, *post*.

(*k*) *I.e.*, the Small Holdings Commissioners.

(*l*) Though it is not required that the land should be actually in the parish, etc., it must obviously be close at hand. As to Crown lands, glebe land, and persons having limited powers of sale or leasing, see s. 40, *post*. Section 23 of the Agricultural Holdings Act, 1908, makes special provision for cases where a landlord desires to resume possession of land for the provision of cottage gardens, labourers' allotments and small holdings.

(*m*) See Part III., *post*, p. 2093.

(*n*) They may make roads under s. 26 (1), *post*. Section 2 (2) of the repealed Allotments Act, 1887, was in the same terms as this sub-section. Questions having arisen with respect to the basis upon which the rent of allotments should be fixed, the L. G. B. stated that, according to an opinion of the law officers of the Crown, the expenditure referred to in s. 2 (2) included the interest payable on the purchase money of the land so acquired for allotments, but not the annual instalments of principal or payments to a sinking fund where the land had been acquired by means of a loan repayable by instalments. Consequently, in considering applications from district or parish councils for sanction to borrow money for allotment purposes, the Board do not require the council to show that the anticipated revenue will cover the instalments of principal in addition to the other expenses.

The Board of Agriculture and Fisheries, however, to whom the powers of the L. G. B. under the Allotments Acts, other than powers as to finance, are transferred by the Act of 1907, seem to hold a different view in regard to the similar provisions governing the acquisition of small holdings by county councils. It was stated on behalf of that Board in the House of Commons on April 3rd, 1908, that the intention of the Act of 1907 was that such charges should be included in the rent, but that the Board would offer no objection to the exclusion of these charges in the calculation of rents where a county council is itself willing to defray them.

If a council find that they are making a profit upon allotments they are not empowered, in the opinion of the L. G. B., to return to the allottees any part of the rents received. Any balance on allotments account which is not required for the allotments must be credited to their general account, but it is open to a council to reduce the rents.

making roads and otherwise, as they think fit, and may from time to time do such things as may be necessary for maintaining such drains, approaches, and roads, or otherwise for maintaining the allotments in a proper condition (*o*).

(2) The council may also adapt the land for allotments by erecting buildings and making adaptations of existing buildings, but so that not more than one dwelling-house shall be erected for occupation with any one allotment; and no dwelling-house shall be erected for occupation with any allotment of less than one acre.

Provisions as to letting of allotments.

27.—(1) The rents of the allotments shall be fixed at an amount not less than such as may reasonably be expected to ensure the council providing the allotments from loss; but in calculating such loss any expenses incurred in an unsuccessful attempt to acquire land for allotments shall be excluded and, subject as aforesaid, such rents may be from time to time charged as are reasonable, having regard to the agricultural value of the land, and not more than a quarter's rent shall be required to be paid in advance in any case where it is deemed necessary by the council to require the payment of rent in advance.

(2) The council providing the allotments shall, for the purposes of all rates and taxes, and all tithe rentcharge payable by an occupier, be deemed to be the occupiers of the allotments which are let, but they shall cause the sums from time to time paid by way of such rates, taxes, and tithe rentcharge in respect of the allotments to be apportioned among them, and cause the sum so apportioned in respect of each allotment to be certified to the tenant thereof, and such sum shall be added to the rent otherwise payable by the tenant in respect of such allotment, and shall be deemed to be part of the rent, and be recoverable accordingly:

Provided that for the purposes of the parliamentary franchise, and the municipal and all other local franchises, the tenants shall notwithstanding this provision be deemed to be the occupiers, and such rates shall be deemed to have been paid by them.

(3) One person shall not hold any allotment or allotments acquired under this Part of this Act, or any enactment hereby repealed, exceeding five acres:

Provided that any part of the land acquired by a council for the purposes of allotments which exceeds five acres may be adapted for letting and let as an allotment, if the county council are satisfied by the council that it is convenient and desirable that it should be so let and consent to such letting accordingly.

(4) An allotment shall not be sublet.

(5) If at any time an allotment cannot be let in accordance with the provisions of this Act and the rules made thereunder, the same may be let to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable possession thereof to be resumed within a period not exceeding twelve months if it should at any time be required to be let under the provisions aforesaid.

(6) A council shall have the same power of letting one or more allotments to persons working on a co-operative system or to an association formed for the purposes of creating or promoting the creation of allotments as may be exercised as respects small holdings by a county council (*p*).

(*o*) The cost of these works, except of making public roads, must be taken into account in fixing rents (see ss. 25 (3), 27 (1)).

(*p*) By s. 9 (2) a county council have power to let one or more small holdings to a number of persons working on a co-operative system, provided such system be approved by the council; and, with the consent of the Board, to let one or more small holdings to any association formed for the purposes of creating or promoting the creation of small holdings, and so constituted that the division of profits amongst the members of the association is prohibited or restricted.

Rules as to letting allotments.

28.—(1) Subject to the provisions of this Act, a borough, urban district, or parish council may make such rules (*q*) as appear to be necessary or proper for regulating the letting of allotments under this Act, and for preventing any undue preference in the letting thereof, and generally for carrying the provisions of this Part of this Act into effect.

(2) Rules under this section may define the persons eligible (*r*) to be tenants of allotments, the notices to be given for the letting thereof, the size of the allotments, the conditions under which they are to be cultivated, and the rent to be paid for them.

(3) All such rules shall make provision for reasonable notice to be given to a tenant of any allotment of the determination of his tenancy.

Rules under this section shall not be of any force unless and until they have been confirmed by the Board in like manner and subject to the like provisions as in the case of byelaws required to be confirmed by the Local Government Board under the Public Health Acts (*s*).

(4) Rules for the time being in force under this section shall be binding on all persons whatsoever; and the council shall cause them to be from time to time made known, in such manner as the council think fit, to all persons interested, and shall cause a copy thereof to be given gratis to any inhabitant of the district or parish demanding the same.

Management of allotments.

29.—(1) The council of a borough, urban district, or parish may from time to time appoint, and, when appointed, remove allotment managers of land acquired by the council for allotments, and the allotment managers shall consist either partly of members of the council and partly of other persons, or wholly of other persons, so that in either case such other persons be persons residing in the locality and contributing to the rate (*t*) out of which the expenses of the council under this Act are paid.

(2) The proceedings and powers of allotment managers shall be such as, subject to the provisions of this Act, may be directed by the council; the allotment managers may be empowered by the council to do anything in relation to the management of the allotments which the council are authorised to do and to incur expenses to such amount as the council authorise, and any expenses properly so incurred shall be deemed to be expenses of the council under this Act.

Recovery of rent and possession of allotments.

30.—(1) The rent for an allotment let by a council in pursuance of this Act, and the possession of such an allotment in the case of any notice to quit, or failure to deliver up possession thereof as required by law, may be recovered by the council as landlords, in the like manner as in any other case of landlord and tenant (*u*).

(2) If the rent for any allotment is in arrear for not less than forty days, o· if it appears to the council that the tenant of an allotment not less than three months after the commencement of the tenancy thereof has not duly observed the rules affecting the allotment made by or in pursuance of this Act. or is resident more than one mile out of the borough, district, or parish for which the allotments are provided, the council may serve upon the tenant, or, if he is residing out of the borough, district or parish, leave at his last known place of abode in the borough, district, or parish, or fix in some con-

(*q*) Model regulations for the use of (a) parish councils and (b) borough and urban district councils have been issued by the Board together with explanatory circulars dated February 4th, 1908, and March 6th, 1908, respectively: see Appendix II., *post.*

(*r*) As to "persons eligible," see notes (*c*), (*f*), pp. 2085—6, *ante:* they must apparently "belong to" the "labouring population."

(*s*) See the P. H. A., 1875, s. 184, *ante*, p. 440.

(*t*) As to this rate, see s. 53, *post.*

(*u*) Therefore the council may distrain for rent. Possession may be recovered under the Small Tenements Act, 1838.

spicuous manner on the allotment, a written notice determining the tenancy at the expiration of one month after the notice has been so served or affixed, and thereupon the tenancy shall be determined accordingly :

Provided that in every such case the council in default of agreement between the incoming and outgoing tenant shall on demand pay to the tenant whose tenancy is so determined any compensation due to him as an outgoing tenant, and the amount of such compensation shall be assessed by an arbitrator appointed by the council or, if the tenant so elect, either by an arbitrator appointed under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (*x*), or under the Agricultural Holdings Act, 1908.

(3) Upon the recovery of an allotment from any tenant, the court directing the recovery may stay delivery of possession until payment of the compensation (if any) due to the outgoing tenant has been made or secured to the satisfaction of the court.

List of allotments.

31.—(1) The council of a borough, urban district, or parish shall cause a list to be kept showing the particulars of the tenancy, acreage, and rent of every allotment let, and of the unlet allotments.

(2) The list shall be open to the inspection of ratepayers in the borough, district, or parish for which the allotments have been provided, in such manner as may be provided by the rules made under this Act by the council, and any ratepayer of such borough, district, or parish, without paying any fee, may take copies of or extracts from the list.

Sale of superfluous or unsuitable land.

32.—(1) Where the council of any borough, urban district, or parish are of opinion that any land acquired by them for allotments or any part thereof is not needed for the purpose of allotments, or that some more suitable land is available, they may, with the sanction of the county council, sell or let such land otherwise than under the provisions of this Act, or exchange the land for other land more suitable for allotments, and may pay or receive money for equality of exchange.

(2) The proceeds of a sale under this Act of land acquired for allotments, and any money received by the council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the land acquired by the council for allotments, or in acquiring, adapting, and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board ; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable.

(3) Sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845 (relating to the right of pre-emption of superfluous lands), shall apply upon any sale in pursuance of this section of any land, but, save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not apply.

Transfer of allotments to borough, district, and parish councils.

33.—(1) The allotment wardens under the Inclosure Acts, 1845 to 1882, having the management of any land appropriated under those Acts either before or after the passing of this Act for allotments or field gardens for the labouring poor of any place, may, by agreement with the council of the borough, urban district, or parish, within whose borough, district, or parish that place is wholly or partly situate, transfer the management of that land to the council, upon such terms and conditions as may be agreed upon with

(*x*) See this Act, *ante*, p. 1794.

the sanction, as regards the allotment wardens, of the Board, and thereupon the land shall vest in the council.

(2) All trustees within the meaning of the Allotments Extension Act, 1882, required or authorised by that or any other Act to let lands in allotments to cottagers, labourers, journeymen, or others in any place, may, if they think fit, in lieu of letting the land in manner provided by the said Acts, sell or let the land to the council of the borough, urban district, or parish in which such place is wholly or partly situate, upon such terms as may be agreed upon, with the sanction, as regards the trustees, of the Charity Commissioners or the Board of Education, as the case may require.

(3) Where, as respects any rural parish, any Act constitutes any persons wardens of allotments, or authorises or requires the appointment or election of any wardens, committee, or managers for the purpose of allotments, the powers and duties of the wardens, committee, or managers shall, subject to the provisions of this Act, be exercised and performed by the parish council, or, in the case of a parish not having a parish council, by persons appointed by the parish meeting, and it shall not be necessary to make the said appointment or to hold the said election.

(4) The provisions of this Act relating to allotments shall apply to land vested in, or the management whereof has been transferred to, a council under this section or the corresponding provision of any enactment repealed by this Act in like manner as if the land had been acquired by the council under the general powers of this Part of this Act.

SUPPLEMENTAL.

Power to make scheme for provision of common pasture (*y*).

34.—(1) Where it appears to the council of any borough, urban district, or parish that, as regards their borough, district, or parish, land can be acquired for affording common pasture at such price or rent that all expenses incurred by the council in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the labouring population, the council may submit to the council of the county in which the borough, district, or parish is wholly or partly situate a scheme for providing such common pasture.

(2) The county council, if satisfied of the expediency of such scheme, may by order authorise the council which submitted it to carry it into effect, and, upon such an order being made, the provisions of this Act relating to allotments shall, with the necessary modifications, apply in like manner as if "allotments" in those provisions included common pasture, and "rent" included a charge for turning out an animal:

Provided that the rules made under those provisions may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

Use of school-room free of charge.

35.—(1) Any room in a public elementary school in respect of which a grant is made out of moneys provided by Parliament may, except while the room is being used for educational purposes, be used free of charge for the purposes of this Part of this Act by the county council, or, with the consent of any two managers, for the purpose of holding public meetings to discuss any question relating to allotments under this Act, but any damage done to the room and any expense incurred by the persons having control over the

(*y*) See also s. 42, *post*.

room on account of its being so used shall be paid by the county council or the persons calling the meeting.

(2) Nothing in this section shall give any right to hold a public meeting in a schoolroom—

(a) Unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation (*z*) to the council of a borough, urban district, or parish under this Part of this Act, has been given, in the case of a school provided by the local education authority to the clerk of that authority, and in any other case to one of the managers of the school; or

(b) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith, after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting.

(3) If the persons calling the meeting fail to obtain the use of a schoolroom under this section, they may appeal to the small holdings and allotments committee under this Act, and the committee shall forthwith decide the appeal, and make such order respecting the use of the room as seems just.

(4) Nothing in this section shall affect the powers as to the use of schoolrooms conferred by section four of the Local Government Act, 1894.

Application to London.

36. The powers as to allotments conferred on borough, urban district, and parish councils by this Act may in London be exercised by the London County Council, and the provisions of this Act as to allotments shall apply accordingly, except that, subject to the provisions of this Act, the expenses shall be defrayed and money borrowed under and in accordance with the provisions of the Local Government Act, 1888.

Application to county boroughs.

37. Such of the provisions of this Part of this Act as require the sanction of, submission to, or order of, a county council shall not apply in the case of a county borough.

PART III.

General.

Acquisition of Land.

Purchase of land by agreement.

38. For the purpose of the purchase of land by agreement under this Act by a council, the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight (*a*) of the Public Health Act, 1875, shall apply as if the council were referred to therein.

Procedure for compulsory acquisition of land (*b*).

39.—(1) Where a council proposes to purchase land compulsorily under this Act, the council may, subject to the provisions of Part I. of the First Schedule to this Act, submit to the Board an order putting in force as respects the land

(*z*) *I.e.*, qualified to make a representation under s. 23 (2), *ante*.
(*a*) See s. 178 (as to Duchy of Lancaster lands), *ante*, p. 423.
(*b*) See the Small Holdings and Allotments Compulsory Purchase, and Compulsory Hiring, Regulations in Appendix II., *post*, pp. 2532 *et seq.*

specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) Where a council propose to hire land compulsorily, the council may submit to the Board an order for the compulsory hiring of the land specified in the order for a period not less than fourteen nor more than thirty-five years, and the provisions of Part I. of the First Schedule to this Act shall apply to the order in like manner as it applies to an order for compulsory purchase, with the substitution of " hiring " for " purchase " and with the modifications set out in Part II. of that Schedule.

(3) An order under this section shall be of no force unless and until it is confirmed by the Board, and the Board may, subject to the provisions of the First Schedule to this Act, confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall become final and have effect as if enacted in this Act ; and the confirmation by the Board shall be conclusive (*c*) evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(4) An order under this section may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired, and every such order shall, if so required by the owner of the land to be acquired, provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by such owner and his tenants of all means of access, drainage, water supply, and other similar conveniences theretofore used or enjoyed by them over the land to be acquired : Provided that, notwithstanding anything contained in this subsection, no new easement created by or in pursuance of the order over land hired by a council shall continue beyond the determination of such hiring.

(5) In determining the amount of any disputed compensation (*d*) under any such order, no additional allowance shall be made on account of the purchase or hiring being compulsory.

(6) Where land authorised to be compulsorily hired by an order under this section is subject to a mortgage, any lease made in pursuance of the order by the mortgagor or mortgagee in possession shall have the like effect (*e*) as if it were a lease authorised by section eighteen of the Conveyancing and Law of Property Act, 1881.

(7) Where the council proposing to acquire land compulsorily is a parish council, the council shall, instead of themselves making and submitting to the Board the order, represent the case to the county council, and thereupon the county council may, on behalf of the parish council, exercise the powers in relation to compulsory purchase or hiring conferred on councils by this Act, and the order shall be carried into effect by the county council, but the land shall be assured or demised to the parish council, and all expenses incurred by the county council shall be paid by the parish council :

Provided that, if the parish council are aggrieved by the refusal of the county council to proceed under this section, the parish council may petition the Board, and thereupon the Board, after such inquiry as they think fit, may make such an order as the county council might have made, and this subsection shall apply as if the order had been made by the county council.

(8) If, after the determination of the amount of the compensation (including in the case of land hired compulsorily the rent) to be paid to any person in

(*c*) See *Ex parte Ringer* (1909), 73 J. P. 436 ; *R.* v. *L. G. B.* (1910), 44 Ir. L. T. 176 ; *R.* v. *L. G. B.* (1911), 45 Ir. L. T. 65.

(*d*) As to compensation where minerals come in question, see *In re Carlisle* (*Earl of*) *and Northumberland C. C.* (1911), 75 J. P. 539.

(*e*) A lease by a mortgagor in possession will bind the mortgagee, and one by a mortgagee in possession will bind the mortgagor after redemption.

respect of his interest in the land proposed to be compulsorily acquired, it appears to the council that the land cannot be let for small holdings or allotments, as the case may be, at such a rent as will secure the council from loss, the council may at any time within six weeks after the determination of the amount by notice in writing withdraw any notice to treat served on that person or on any other person interested in the land, and in such case any person on whom such a notice of withdrawal has been served shall be entitled to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal, and the amount of such compensation shall, in default of agreement, be determined by arbitration :

Provided that in every case in which the notice of withdrawal is given by the Commissioners acting in default of the council all compensation payable under this subsection shall be paid out of the Small Holdings Account (*f*).

Powers of certain limited owners to sell and lease land for small holdings or allotments.

40.—(1) Any person having power to lease land for agricultural purposes for a limited term, whether subject to any consent or conditions or not, may, subject to the like consent and conditions (if any), lease land to a council for the purposes of small holdings or allotments for a term not exceeding thirty-five years, either with or without such right of renewal as is conferred by this Act in the case of land hired compulsorily for those purposes.

(2) The like powers of leasing may be exercised, in the case of land belonging to the Crown, by the Commissioners of Woods, with the consent of the Treasury, in the case of land forming part of the possessions of the Duchy of Lancaster, by the Chancellor and Council of the Duchy of Lancaster by deed under the seal of the Duchy in the name of his majesty his heirs and successors, and, in the case of land forming part of the possessions of the Duchy of Cornwall, by the Duke of Cornwall or other the persons for the time being having power to dispose of land belonging to that Duchy.

(3) The like powers of leasing may be exercised in the case of glebe land (*g*) or other land belonging to an ecclesiastical benefice by the incumbent thereof with the consent of the Ecclesiastical Commissioners alone upon such terms and conditions and in such manner as the Ecclesiastical Commissioners may approve.

(4) Where a person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, sells, exchanges, or leases any settled land to a county council for the purposes of small holdings, the sale, exchange, or lease may be made at such a price, or for such consideration, or at such rent, as, having regard to the said purposes and to all the circumstances of the case, is the best that can be reasonably obtained.

(5) A person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, may grant the settled land, or a part thereof, to a county council for the purposes of small holdings in perpetuity, at a fee farm or other rent secured by condition of re-entry, or otherwise as may be agreed upon.

Restrictions on the acquisition of land (*h*).

41.—(1) No land shall be authorised by an order under this Act to be acquired compulsorily which at the date of the order forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity

(*f*) As to the small holdings account, see s. 51, *post*.

(*g*) See further as to the acquisition of glebe land, the Glebe Lands Act, 1888, *ante*, p. 1813 ; see also s. 48, *post*.

(*h*) Land containing minerals is not excepted, but the owner is protected by s. 46 (1), *post*, and the incorporation in compulsory orders of ss. 77—85 of the Railway Clauses Act, 1845 (see Schedule I., *post*).

or convenience of any dwelling-house, or which is woodland not wholly surrounded by or adjacent to land acquired by a council under this Act, or which at that date is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archæological interest.

(2) A council in making, and the Board in confirming, an order for the compulsory acquisition of land shall have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose, where part only of a holding is taken, shall take into consideration the size and character of the existing agricultural buildings not proposed to be taken which were used in connection with the holding, and the quantity and nature of the land available for occupation therewith, and shall also, so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land.

(3) No holding of fifty acres or less in extent, nor any part of any such holding, shall be authorised by an order under this Act to be acquired compulsorily for the purposes of small holdings or allotments.

Grazing rights, &c., to be attached to small holdings or allotments.

42.—(1) The powers of a council to acquire land for small holdings or allotments shall, subject to the restrictions by this Act imposed, include power to acquire land for the purpose of attaching to small holdings or allotments provided by the council rights of grazing and other similar rights over the land so acquired, and to acquire for that purpose stints (*i*) and other alienable common rights of grazing.

(2) Any rights created or acquired by the council under this section shall be attached to the small holdings or allotments in such manner and subject to such regulations as the council think expedient.

(3) Where any right of grazing, sheepwalk, or other similar right is attached to land acquired by a county council for the purposes of small holdings, the council may attach any share of the right to any small holding in such manner and subject to such regulations as they think expedient.

Compensation for loss of employment by labourers.

43. Where a labourer, who has been regularly employed on any land acquired by a county council for small holdings, proves to the satisfaction of the county council that the effect of the acquisition was to deprive him of his employment, and that there was no employment of an equally beneficial character available to him in the same locality, the county council may pay to him such compensation as they think just for his loss of employment or for his expenses in moving to another locality, and any sum so paid shall be treated as part of the expenses of the acquisition of the land.

PROVISIONS AFFECTING LAND ACQUIRED.

Power of council to renew tenancy of land compulsorily hired.

44.—(1) Where a council has hired land compulsorily for small holdings or allotments, the council may, by giving to the landlord not more than two years nor less than one year before the expiration of the tenancy notice in writing, renew the tenancy for such term, not being less than fourteen nor more than thirty-five years, as may be specified in the notice, and at such rent as, in default of agreement, may be determined by valuation by a valuer appointed by the Board, but otherwise on the same terms and conditions as the original lease, and so from time to time :

(*i*) As to "stints," see note (*l*) on p. 1638, *ante* ; *cf*. also s. 34, *ante*.

Provided that, if on any such notice being given, the landlord proves to the satisfaction of the Board that any land included in the tenancy is required for the amenity or convenience of any dwelling house, then such land shall be excluded from the renewed tenancy.

(2) In assessing the rent to be paid under this section the valuer shall not take into account any increase in the value of the holding—

(a) due to improvements in respect of which the council would have been entitled to compensation (*j*), if instead of renewing the tenancy the council had quitted the land on the determination of the tenancy; or

(b) due to any use to which the land might otherwise be put during the renewed term, being a use in respect of which the landlord is entitled to resume possession of the land under this Act (*k*); or

(c) due to the establishment by the council of other small holdings or allotments in the neighbourhood,

or any depreciation in the value of the land in respect of which the landlord would have been entitled to compensation if the council had so quitted the land as aforesaid.

Interchange of land for small holdings and allotments.

45. A county council may sell or let to a borough, urban district, or parish council for the purposes of allotments any land acquired by them for small holdings, and a borough, urban district, or parish council may sell or let to the county council for the purpose of small holdings any land acquired by them for allotments, and the provisions of the Lands Clauses Acts with respect to the sale of superfluous land (*l*) shall not apply on any such sale.

Power to resume possession of land hired compulsorily.

46.—(1) Where land has been hired by a council compulsorily for small holdings or allotments, and the land or any part thereof at any time during the tenancy thereof by the council is shown to the satisfaction of the Board to be required by the landlord to be used for building, mining, or other industrial purposes, or for roads necessary therefor, it shall be lawful for the landlord to resume possession of the land or part thereof upon giving to the council twelve months' previous notice in writing of his intention so to do; and, if a part only of the land is resumed, the rent payable by the council shall as from the date of resumption be reduced by such sum as in default of agreement may be determined by valuation by a valuer appointed by the Board.

(2) Where the land has been hired compulsorily by the Commissioners acting in default of a county council, any question as to the right of the landlord to resume possession of the land or any part thereof under this section shall be determined by an arbitrator appointed by the Lord Chief Justice of England.

Compensation for improvements.

47.—(1) Where a council has let a small holding or allotment to any tenant, the tenant shall as against the council have the same rights with respect to compensation for the improvements mentioned in Part I. of the Second Schedule to this Act as he would have had if the holding had been a holding to which section forty-two (*m*) of the Agricultural Holdings Act, 1908, applied:

Provided that the tenant shall not be entitled to compensation in respect of any such improvement if executed contrary to an express prohibition in writing by the council affecting either the whole or any part of the holding or allotment; but, if the tenant feels aggrieved by any such prohibition, he may appeal to the Board, who may confirm, vary, or annul the prohibition, and the decision of the Board shall be final.

(*j*) See s. 47 (2), *post*.
(*k*) See s. 46, *post*.
(*l*) *I.e.*, ss. 127—135 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 1363—5.
(*m*) As to this section, see now the Agricultural Holdings Act, 1913, and *In re Kedwell and Flint & Co.*, [1911] 1 K. B. 797.

(2) Where land has been hired by a council for small holdings or allotments, the council shall (subject in the case of land hired by agreement to any agreement to the contrary) be entitled at the determination of the tenancy on quitting the land to compensation under the Agricultural Holdings Act, 1908, for any improvement mentioned in Part I. of the Second Schedule to this Act, and for any improvement mentioned in Part II. of that Schedule which was necessary or proper to adapt the land for small holdings or allotments, as if the land were a holding to which section forty-two (*n*) of the Agricultural Holdings Act, 1908, applied, and the improvements mentioned in Part II. of the said Schedule were improvements mentioned in Part III. of the First Schedule to the Agricultural Holdings Act, 1908 :

Provided that, in the case of land hired compulsorily, the amount of the compensation payable to the council for those improvements shall be such sum as fairly represents the increase (if any) in the value to the landlord and his successors in title of the holding due to those improvements.

(3) The tenant of an allotment to which Part II. of this Act applies may, if he so elects, claim compensation for improvements under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (*o*), instead of under the Agricultural Holdings Act, 1908, as amended by this section, notwithstanding that the allotment exceeds two acres in extent.

(4) A tenant of any small holding or allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes (*p*) planted or acquired by him for which he has no claim for compensation, and may remove any toolhouse, shed, greenhouse, fowl-house, or pigsty built or acquired by him for which he has no claim for compensation.

Provisions as to glebe lands.

48. In the case of glebe land or other land belonging to an ecclesiastical benefice hired by a council for the purposes of small holdings or allotments—

(1) The provisions of the Ecclesiastical Dilapidations Act, 1871, shall not during the continuance of the tenancy be applicable to the buildings upon the land :

(2) At the determination of the tenancy, on the council quitting the land, or at any time within twelve months thereafter, the incumbent of the benefice to which the land belongs may apply to the Ecclesiastical Commissioners for their consent to the removal of any buildings which have been erected on the land for the purpose of adapting the land for small holdings or allotments, and, on proof to the satisfaction of the Commissioners that any such buildings are useless, and that it is to the interest of the benefice that they should be removed, the incumbent may, with the consent of the Commissioners, and subject to such directions as they may give, pull down any such buildings and dispose of the materials thereof, and any proceeds shall be paid to the Commissioners to be by them applied to the improvement of the benefice in such manner as the Commissioners may direct.

CO-OPERATIVE SOCIETIES, &c.

Co-operative societies, &c.

49.—(1) A county council may promote the formation or extension of, and may, subject to the provisions of this section, assist, societies on a co-

(*n*) See note (*m*), *ante*, p. 2097.
(*o*) See this Act, *ante*, p. 1794.
(*p*) Under the Allotments and Cottage Gardens Compensation Act, 1887 (*ante*, p. 1794), a tenant is entitled to compensation in respect of fruit trees and bushes planted with the authority's written consent. This sub-section enables him to remove other trees or bushes or fruit trees or bushes planted without such consent.

operative basis, having for their object, or one of their objects, the provision or the profitable working of small holdings or allotments, whether in relation to the purchase of requisites, the sale of produce, credit banking, or insurance, or otherwise, and may employ as their agents for the purpose any such society as is mentioned in sub-section (4) of this section.

(2) The county council, with the consent of, and subject to regulations made by, the Local Government Board, may for the purpose of assisting a society make grants or advances to the society, or guarantee advances made to the society, upon such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the council think fit.

(3) Where the Board themselves provide small holdings under the provisions of this Act, they may, with respect to any such society carrying on business or intending to carry on business in the neighbourhood of those small holdings, exercise the powers of a county council under this section, and the provisions of this section shall apply accordingly, except that references to the Treasury shall be substituted for references to the Local Government Board, and that the expenses and receipts of the Board under this section shall be paid out of and into the Small Holdings Account.

(4) The Board with the consent of the Treasury may out of the Small Holdings Account make grants, upon such terms as the Board may determine, to any society, having as its object or one of its objects the promotion of co-operation in connection with the cultivation of small holdings or allotments.

Small Holdings and Allotments Committees.

50.—(1) Every county council shall establish a small holdings and allotments committee, consisting either wholly or partly of members of the council, but the members of the council shall be a majority, and all matters relating to the exercise and performance by the council of their powers and duties under this Act (except the power of raising a rate or borrowing money) shall stand referred to the small holdings and allotments committee, and the council before exercising any such powers shall, unless in their opinion the matter is urgent, receive and consider the report of the small holdings and allotments committee with respect to the matter in question, and the council may also delegate to the small holdings and allotments committee, with or without restrictions or conditions, as they think fit, any of their powers under this Act except the power of raising a rate or borrowing money. Small holdings and allotments committees.

(2) The small holdings and allotments committee may delegate any of their powers to sub-committees, consisting either wholly or partly of members of the committee, and in appointing any sub-committee to which is committed the powers of management of small holdings shall have regard to the advisability of including amongst the members of the sub-committee members of the councils of the boroughs, urban districts, or parishes in which the holdings are situate, or for which they are provided, and other persons acquainted with the needs and circumstances of the area for which the sub-committee act.

(3) Where any receipts or payments of money under this Act are entrusted by the county council to the small holdings and allotments committee, or any sub-committee thereof, the accounts of those receipts and payments shall be accounts of the county council, and made up and audited accordingly.

(4) This section, so far as relates to small holdings, shall apply to the council of a county borough in like manner as it applies to a county council, but, so far as it relates to allotments and sub-committees, shall not apply to the council of a county borough, without prejudice however to the power of such a council to appoint their small holdings committee, if duly qualified, to be allotment managers in pursuance of Part II. of this Act.

EXPENSES AND BORROWING.

Small Holdings Account.

51.—(1) For the purposes of this Act "The Small Holdings Account," opened at the Bank of England under the Small Holdings and Allotments Act, 1907, shall be continued.

(2) There shall be paid to this account—

(a) such money as may from time to time be provided by Parliament towards defraying the costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account; and

(b) all sums received by the Board and directed by this Act to be paid into the Small Holdings Account.

(3) The costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account shall be paid by the Board out of the money standing to that account.

(4) At the end of every financial year, accounts of the receipts and expenditure of the Small Holdings Account shall be made up in such form and with such particulars as may be directed by the Treasury, and shall be audited by the Comptroller and Auditor-General as public accounts in accordance with such regulations as the Treasury may make, and shall be laid before Parliament, together with his report thereon.

(5) Payments out of, and into, the Small Holdings Account, and all other matters relating to the account, and to the money standing to the credit of the account, shall be paid and regulated in such manner as the Treasury direct.

Borrowing powers and expenses.

52.—(1) A county council may borrow money for the purposes of the provisions of this Act relating to small holdings and for the purpose of making grants or advances to co-operative societies in accordance with the Local Government Act, 1888 (*q*), or, if the council of a county borough, with the Public Health Acts, except that any money so borrowed shall, notwithstanding anything in either of those Acts, be repaid within such period, not exceeding—

(a) where the purpose for which the money is borrowed is the purchase of land, eighty years; and

(b) in any other case, fifty years,

as the council, with the consent of the Local Government Board, determine in each case: Provided that money so borrowed shall not be reckoned as part of the total debt of a county for the purpose of section sixty-nine, sub-section two, of the Local Government Act, 1888.

(2) The Public Works Loans Commissioners may, in manner provided by the Public Works Loans Act, 1875 (*r*), lend any money which may be borrowed by a county council for such purposes as aforesaid:

Provided that—

(a) the loan shall be made at the minimum rate allowed for the time being for loans out of the local loans fund; and

(b) if the Local Government Board make a recommendation to that effect, the period for which the loan is made by the Public Works Loans Commissioners may exceed the period allowed under the Public Works Loans Act, 1875, and the Acts amending that Act, but the period shall not exceed the period recommended by the Local Government Board, nor, where the purpose of the loan is the purchase of land, eighty years, or in any other case fifty years; and

(c) as between loans for different periods, the longer duration of the loan shall not be taken as a reason for fixing a higher rate of interest.

(3) Any capital money received by a county council in payment or dis-

(*q*) See also the County Councils Mortgages Act, 1909.
(*r*) See this Act, *ante*, p. 1608.

charge of purchase money for land sold by them, or in repayment of an advance made by them, shall, subject to the provisions of this Act, be applied, with the sanction of the Local Government Board, either in repayment of debt or for any other purpose for which capital money may be applied.

(4) The expenses incurred by the council of a county borough under the provisions of this Act relating to small holdings shall be defrayed out of the borough fund or borough rate, and any money borrowed by such a council shall be borrowed on the security of the borough fund or borough rate.

Expenses and borrowing.

53.—(1) All expenses (*s*) incurred by the council of a borough, urban district, or parish under the provisions of this Act relating to allotments, including allowances to officers of the council for duties under those provisions, and any sums under those provisions repayable by a district or parish council to a county council acting in their default, shall be defrayed—

(a) in the case of a borough or urban district council, as part of the general expenses of their execution of the Public Health Acts (*t*); and

(b) in the case of a parish council, as part of the expenses of the council (*u*).

(2) All expenses incurred by the county council in executing the said provisions in any district or parish on default of a district or parish council, or incurred by the county council in or incidentally to a local inquiry under those provisions, shall be paid in the first instance out of the county fund as expenses for general county purposes, and, unless defrayed out of moneys received by the council in respect of any land acquired under those provisions otherwise than by sale or exchange, or out of money borrowed as before in this Act mentioned, shall, when the powers and duties of the district or parish council under those provisions are transferred to the county council in pursuance of this Act, be repaid to the county council as a debt by the district or parish council.

(4) The council of a borough, urban district, or parish may borrow for the purposes of acquiring, improving, and adapting land for allotments—

(a) in the case of a borough or urban district council, in like manner and subject to the like conditions as for the purposes of the Public Health Acts (*x*); and

(b) in the case of a parish council, under and in accordance with the provisions of the Local Government Act, 1894, but the money so borrowed by a parish council shall not be reckoned as part of the debt of the parish for the purpose of the limitation on borrowing under section twelve of that Act.

(5) Sections two hundred and forty-two and two hundred and forty-three of the Public Health Act, 1875 (*y*), relating to loans by the Public Works Loan Commissioners to a local authority, shall apply to a loan to a borough or urban district council under this section, and, with the necessary adaptations, to a loan to a parish council under the Local Government Act, 1894, or to a county council lending money to a parish council under that Act, where the purpose for which the loan is required by the parish council is the acquisition, improvement, or adaptation of land under Part II. of this Act,

(*s*) As to what expenses are to be included, see also s. 61 (3), *post.*

(*t*) See the P. H. A., 1875, s. 207, *ante*, p. 468.

(*u*) Apparently the restrictions upon expenditure contained in s. 11 of the L. G. A., 1894, apply.

(*x*) See the P. H. A., 1875, ss. 233—244, *ante*, pp. 519—539.

It is understood that the Public Works Loan Commissioners are not willing to make advances to local authorities for the purchase of land for allotment purposes, even when the loan has been sanctioned by the L. G. B., unless they can be satisfied that the anticipated income from the allotments will balance the expenditure inclusive of annual charges for the repayment of the principal within a period of fifty years.

(*y*) See these sections, *ante*, p. 537.

in like manner as if those sections were herein re-enacted and in terms made applicable thereto.

Separate accounts of receipts and expenditure.

54.—(1) Separate accounts shall be kept of the receipts and expenditure of a council under this Act with respect to small holdings or allotments, and any such receipts shall, subject to the provisions of this Act, be applicable to the purposes of small holdings or allotments, but not for any other purpose except with the consent of the Local Government Board; and, for the purpose of the provisions relating to the audit of accounts, any persons appointed under this Act by a council to exercise and perform powers and duties as to the management of allotments shall be deemed to be officers of the council.

(2) The council of a borough, urban district, or parish shall within one month after the end of every financial year of the council cause an annual statement, showing their receipts and expenditure with respect to allotments for that year, and their liabilities outstanding at the end of that year, to be deposited at some convenient place in the borough, district, or parish, and any ratepayer may without fee inspect and take copies of the statement.

SUPPLEMENTAL.

Provisions as to land acquired by Commissioners.

55. Any land acquired by the Commissioners under this Act or any enactment repealed by this Act shall be vested in the Board, but the Board may at any time transfer the land to the council at whose expense the land was acquired, and shall so transfer the land on payment of all sums due from the council in connection therewith, and on proof to the satisfaction of the Board that the council are willing to exercise and perform their powers and duties in relation thereto.

Provisions as to Commissioners.

56. Anything by this Act required or authorised to be done by or to the Commissioners may be done by or to any one such Commissioner, and any document purporting to be signed by a Commissioner shall be received in evidence without proof of the appointment or handwriting of the Commissioner.

Local inquiries.

57.—(1) The Board and the Small Holdings Commissioners and other officers of the Board shall have for the purpose of an inquiry in pursuance of this Act the same powers as the Local Government Board and their inspectors respectively have for the purpose of an inquiry under the Public Health Acts (*z*).

(2) Notices of the inquiries shall be given and published in accordance with such general or special directions as the Board may give.

(3) A local inquiry by a county council for the purposes of the provisions of this Act relating to allotments shall be held by such one or more members of the small holdings and allotments committee (*a*) of the council or by such officer of the council or other person as that committee may appoint to hold the inquiry.

Arbitrations and valuations.

58.—(1) All questions which under this Act are referred to arbitration shall, unless otherwise expressly provided by this Act, be determined by a single arbitrator in accordance with the Agricultural Holdings (England) Act, 1908.

(2) Where an order has been made and confirmed authorising the compulsory acquisition of land by the Commissioners acting in default of a county

(*z*) See the P. H. A., 1875, ss. 293, 296, *ante*, pp. 622, 625.
(*a*) As to this committee, see s. 50, *ante*.

council, the arbitrator or valuer, as the case may be, shall be appointed by the Lord Chief Justice of England instead of by the Board.

(3) The remuneration of an arbitrator or valuer appointed under this Act shall be fixed by the Board.

59. The Board shall make an annual report to Parliament of their proceedings, and of the proceedings of the Commissioners, under this Act, and also of the proceedings of the several county, borough, district, and parish councils under this Act, and for that purpose every such council shall, before such date in every year as the Board may fix, send to the Board a report of their proceedings under this Act during the preceding year. Annual report to Parliament.

60. Nothing in this Act shall affect the rights and obligations under any tenancy created under any enactment repealed by this Act. Saving for existing tenancies.

61.—(1) For the purposes of this Act— Interpretations.

The expression "small holding" means an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding fifty pounds :

The expression "allotment" includes a field garden :

The expressions "agriculture" and "cultivation" shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like :

The expression "county" shall mean the area under the authority of a county council :

The expression "county council" shall in relation to small holdings include the council of a county borough, and in its application to a county borough the expression "county fund" shall mean the borough fund or borough rate :

The expression "prescribed" means prescribed by regulations (*b*) made by the Board :

The expression "landlord," in relation to any land compulsorily hired by a council, means the person for the time being entitled to receive the rent of the land from the council.

(2) In this Act and in the enactments incorporated with this Act the expression "land" shall include any right or easement in or over land.

(3) For the purposes of this Act, any expenses incurred by a council in the enfranchisement of any land acquired by them for small holdings or allotments, or in the purchase or redemption of land tax, or any quit rent, chief rent, tithe, or other rentcharge, or other perpetual annual sum issuing out of land so acquired, shall be deemed to have been incurred in the purchase of the land.

(4) In this Act references to a parish council shall, in the case of a rural parish, not having a parish council, include references to the parish meeting.

(5) Any notice required by this Act to be served or given may be sent by registered post.

62. The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule. Repeal.

Provided that—

(a) nothing in this Act shall affect any order, scheme, draft scheme, rules, regulations, report, petition, notice, or other document made, prepared, submitted, served, or given under any enactment so repealed, but

(*b*) See Regulations in Appendix II., *post*, made under the earlier repealed Acts, but kept in force by s. 62 (a).

every such document shall have effect as if made, prepared, submitted, served, or given under this Act; and

(b) references in any conveyance, lease, or other document to any enactment so repealed shall have effect as if they had been references to the corresponding provisions of this Act; and

(c) if any question arises as to whether any power of the Local Government Board under the enactments relating to allotments hereby repealed was thereby transferred to the Board of Agriculture and Fisheries, the question shall be determined by the Local Government Board, whose decision shall be final (*c*).

Short title, commencement and extent.

63.—(1) This Act may be cited as the Small Holdings and Allotments Act, 1908.

(2) This Act shall come into operation on the first day of January, one thousand nine hundred and nine.

(3) This Act shall not extend to Scotland or Ireland.

SCHEDULES.

FIRST SCHEDULE.

PART I.

Provisions as to the Compulsory Acquisition of Land by a Council.

(1) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the council and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845 (*d*), but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly.

(2) The order shall be published by the council in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land, as may be prescribed.

(3) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the council and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.

(4) Before confirming the order the Board shall consider the report of the person who held the inquiry, and all objections made thereat.

(5) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry

(*c*) Before 1907, the L. G. B. exercised all the powers of the central authority in relation to allotments.

(*d*) These sections relate to the acquisition of land with minerals beneath it; see *In re Carlisle* (*Earl of*) *and Northumberland C. C.* (1911), 75 J. P. 539, and cases on p. 1408 decided under the Waterworks Clauses Act, 1847.

or arbitration shall hear, by themselves or their agents, any authorities or parties authorised by or under this Act to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.

(6) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under the schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily.

(7) In construing, for the purposes of this schedule, or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the council shall be deemed to be the promoters of the undertaking.

(8) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

Part II.

Provisions as to the Compulsory Hiring of Land by a Council.

(1) The Board shall make regulations for the purpose of carrying the order into effect and of protecting the council and the persons interested in the land, and the order shall incorporate such regulations, together with such provisions of the Lands Clauses Acts and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845 (*d*), as may, subject to the prescribed adaptations, appear to the Board necessary or expedient for that purpose.

(2) The order authorising the land to be hired compulsorily shall determine the terms and conditions of the hiring other than the rent, and in particular—

(a) shall provide for the insertion in the lease of covenants by the council to cultivate the land in a proper manner and to pay to the landlord at the determination of the tenancy on the council quitting the land compensation for any depreciation of land by reason of any failure by the council, or any person deriving title under them, to observe such covenants, or by reason of any user of the land by the council or such person as aforesaid, and (unless otherwise agreed) to keep the buildings and premises demised in repair; and

(b) shall not authorise the breaking up of pasture unless the Board are satisfied that it can be so broken up without depreciating the value of the land, or that the circumstances are such that small holdings cannot otherwise be successfully cultivated; and

(c) shall not, except with the consent of the landlord, confer on the council any right to fell or cut timber or trees or any right to take, sell, or carry away any minerals, gravel, sand, or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting the land for small holdings or allotments, and except upon payment of compensation for minerals, gravel, sand, or clay so used.

(3) The determination of—

(a) The amount of the rent to be paid by the council for the land compulsorily hired;

(b) The amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise; and

(c) Where part only of a holding held for an unexpired term is hired, the rent to be paid for the residue of the holding during the remainder of that term ;

shall in default of agreement be by valuation by a single valuer appointed by the Board : Provided that, if the land hired is in the occupation of a tenant, he may by notice in writing served on the council before the determination of his tenancy, require that any claim by him against the council which, under the Agricultural Holdings Act, 1908, might be referred to arbitration under that Act, shall be so referred, and in such case those claims shall be determined by arbitration under that Act and not by valuation under this Act.

(4) The valuer, in fixing the rent to be paid for the land compulsorily hired, shall take into consideration the rent (if any) at which the land has been let and the annual value at which the land is assessed for purposes of income tax or rating, the loss (if any) caused to the owner by severance, the terms and conditions of the hiring (including any reservation of sporting or fishing rights), and all the other circumstances connected with the land, but shall not make any allowance in respect of any use to which the land compulsorily hired might otherwise be put by the owner during the term of hiring, being a use in respect of which the owner is entitled to resume possession of the land under this Act.

(5) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land compulsorily hired shall, as far as possible, be provided for by taking such compensation into account in fixing the rent to be paid for the residue of the holding during the remainder of the term for which it is held by the tenant.

(6) Any person interested in any valuation shall give the valuer all such assistance, information, and explanations as he may require, and shall produce to the valuer, or give him access to, all such books, accounts, vouchers, and other documents relating to the land to be compulsorily hired as he may reasonably require for the purposes of valuation, and such expenses as the valuer certifies to have been properly incurred by any person in furnishing such assistance, information, and explanations, or otherwise, in relation to the valuation, shall be paid by the council.

(7) On the determination of any tenancy created by compulsory hiring any questions as to the amount due by the council for depreciation shall in default of agreement be determined by arbitration.

SECOND SCHEDULE.

IMPROVEMENTS REFERRED TO IN SECTION FORTY-SEVEN.

PART I.

(1) Planting of standard or other fruit trees permanently set out ;
(2) Planting of fruit bushes permanently set out ;
(3) Planting of strawberry plants ;
(4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.

PART II.

(1) Erection, alteration, or enlargement of buildings ;
(2) Formation of silos ;
(3) Laying down of permanent pasture ;
(4) Making and planting of osier beds ;
(5) Making of water meadows or works of irrigation ;
(6) Making of gardens ;
(7) Making or improving of roads or bridges ;
(8) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes ;

(9) Making or removal of permanent fences ;
(10) Planting of hops ;
(11) Planting of orchards or fruit bushes ;
(12) Protecting young fruit trees ;
(13) Reclaiming of waste land ;
(14) Warping or weiring of land ;
(15) Embankments and sluices against floods ;
(16) The erection of wirework in hop gardens ;
(17) Drainage.

THIRD SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
50 & 51 Vict. c. 48.	The Allotments Act, 1887.	The whole Act, except as respects sub-sections (4) to (8) of section three so far as they are applied by any other enactment (*e*).
53 & 54 Vict. c. 65.	The Allotments Act, 1890.	The whole Act.
55 & 56 Vict. c. 31.	The Small Holdings Act, 1892.	The whole Act, except so far as it relates to Scotland.
56 & 57 Vict. c. 73.	The Local Government Act, 1894.	In section six, sub-sections (3) and (4).
60 & 61 Vict. c. 65.	The Land Transfer Act, 1897.	Section nineteen.
7 Edw. 7, c. 54.	The Small Holdings and Allotments Act, 1907.	The whole Act.

THE POST OFFICE ACT, 1908.

(8 Edw. 7, c. 48.)

An Act to consolidate Enactments relating to the Post Office.

[21st December 1908.]

* * * * *

Postmaster-General and Officers.

43. (*f*) Notwithstanding anything in any other Act, neither the Postmaster-General nor any officer of the Post Office (*g*) shall be compelled to serve as

Exemption of officers of Post Office from certain offices.

(*e*) This exception refers to s. 9 of the L. G. A., 1894, and has no bearing on the present subject.

(*f*) This section reproduces s. 12 of the Post Office (Management) Act, 1837, repealed by the present Act. Other statutes containing exemptions couched in varying terms are : as to Registrars of Births and Marriages, the Births and Deaths Registration Act, 1837, s. 18 (" parochial or corporate office ") ; as to medical practitioners, the Medical Act, 1858, s. 35 (" corporate, parochial, ward, hundred and township offices ") ; as to dentists, the Dentists Act, 1878, s. 30 (similarly worded) ; as to customs officers and servants, the Customs Consolidation Act, 1876, s. 9 (" corporate, parochial or other public office ") ; as to inland revenue officers and servants, the Inland Revenue Regulation Act, 1890, s. 8 (similarly worded) ; as to army reservists, the Reserve Forces Act, 1882, s. 7 (" parochial,

(*g*) For note (*g*) see next page.

a mayor or sheriff, or in any ecclesiastical or corporate or parochial or other public office or employment, or on any jury or inquest, or in the militia.

EXTENSION OF POSTAL FACILITIES AND ACCOMMODATION.

Indemnity on account of extending post office accommodation.

48. The Postmaster-General may contract with, or take security from, any person applying to him to establish any post or telegraph office or to extend the accommodations of the postal or telegraphic service to any place, for indemnifying the Postmaster-General against any loss he may sustain thereby, and the indemnity may be either for the whole or any part of the loss sustained, and for such time as the Postmaster-General may think necessary.

Power for local authority to contribute towards new post office, or undertake to pay loss on extra postal facilities.

49.—(1) (*h*) Where the council of any borough or any urban district consider that it would be beneficial to the inhabitants of the borough or district that any new post office (*i*) should be on a more expensive site, or of a larger size or of a more ornate building, or otherwise of a more expensive character than the Postmaster-General would otherwise provide, the council may contribute towards the new post office, either by a grant of money, or, with the consent of the Local Government Board, by the appropriation of land belonging to the council, or by the purchase of land for the purpose.

(2) (*k*) Where the council of any borough or any urban district consider that it would be beneficial to the inhabitants of the borough or district that any post or telegraph office (*i*) should be established or any additional facilities (postal or other) (*l*) provided by the Postmaster-General in or for the purposes of the borough or district, the council may undertake to pay to the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of the office or the provision of the facilities.

(3) (*m*) Where the council of any rural district, or the parish council of a parish, or in the case of a parish not having a parish council the parish meeting, consider that it would be for the benefit, in the case of a rural district council, of any contributory place or places (*n*) within their district, and in the case of a parish council or parish meeting of their parish, that any post or telegraph office (*i*) should be established or any additional postal or other facilities (*l*) provided by the Postmaster-General whether within or without the area to be benefited, that council or meeting may undertake to pay to

township or borough office"); as to territorials, the Territorial and Reserve Forces Act, 1907, s. 23 (4) ("peace officer or parish officer"); as to factory inspectors, the Factory and Workshop Act, 1901, s. 118 (6) ("parochial or municipal office"); as to full pay and half-pay officers, and persons employed in military or naval establishments, etc., the Municipal Corporations Act, 1882, s. 253 ("any office or duty in any borough"). Most of the above exemptions extend also to jury service and inquests.

(*g*) By s. 89, the expression "officer of the post office" includes, unless the context otherwise requires, the Postmaster-General, and any person employed in any business of the Post Office, whether employed by the Postmaster-General, or by any person under him or on behalf of the Post Office.

(*h*) Sub-sections (1) and (7) reproduce in practically identical words s. 7 of the Post Office Act, 1891, repealed by the present Act.

(*i*) By s. 89, unless the context otherwise requires, the expression "post office" includes any house, building, room, carriage, or place used for the purpose of the Post Office and any post office letter box, and the expression "post office letter box" includes any pillar box, wall box, or other box or receptacle provided by the permission or under the authority of the Postmaster-General for the purpose of receiving postal packets, or any of them, for transmission by or under the authority of the Postmaster-General.

(*k*) This sub-section reproduces in practically identical words s. 1 of the Post Office Guarantee (No. 2) Act, 1898, repealed by the present Act.

(*l*) Including telephone facilities.

(*m*) This sub-section reproduces without material alteration s. 8 of the Post Office Act, 1891, the Post Office Amendment Act, 1895, and the Post Office (Guarantee) Act, 1898, repealed by the present Act.

(*n*) As to a "contributory place," see the P. H. A., 1875, s. 229, *ante*, p. 509.

the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of the office, or the provision of the facilities :

Provided that a rural district council shall not exercise their powers under this provision as respects any office established or facilities provided outside the contributory place proposed to be charged unless the parish council, or if there is no parish council the parish meeting, of any parish wholly or partly situated in the contributory place consent to the exercise of the powers.

(4) (*o*) Any expenses incurred by the council of a borough under this section may be paid out of the borough fund or borough rate, and any expenses incurred by the council of an urban district (not a borough) may be paid out of the rate (*p*) out of which the general expenses of the council under the Public Health Act, 1875, are defrayed.

(5) (*o*) Any expenses incurred by the rural district council in pursuance of an undertaking under this section may be defrayed as special expenses legally incurred in respect of the contributory place or places, and shall be apportioned between those places if more than one, and sections two hundred and twenty-nine, two hundred and thirty, and two hundred and thirty-one of the Public Health Act, 1875, shall apply accordingly (*q*).

(6) (*o*) Any expenses incurred by a parish council or meeting in pursuance of an undertaking under this section shall be defrayed as expenses of that council or meeting, as the case may be, within the provisions of the Local Government Act, 1894 (*r*).

(7) (*s*) The council of a borough may borrow for the purposes of sub-section (1) of this section under section one hundred and six of the Municipal Corporations Act, 1882, and any enactment amending the same, and the council of an urban district (not a borough) may borrow for the purposes of the same sub-section in like manner as if these purposes were purposes of the Public Health Act, 1875, and the provisions of that Act with respect to borrowing shall apply accordingly (*t*).

(8), (9), (10), (11) [*Scotland, Ireland, Channel Islands, Isle of Man.*]

PUBLIC MEETING ACT, 1908.

(8 Edw. 7, c. 66.)

An Act to prevent Disturbance of Public Meetings. [21st December 1908.]

Penalty on endeavour to break up public meeting.

1.—(1) Any person who at a lawful public meeting (*u*) acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of the writ for the return of a member of Parlia-

(*o*) The incidence of the expenses was the same under the various repealed Acts referred to in the preceding notes.

(*p*) *I.e.*, usually the general district rate ; see the P. H. A., 1875, s. 207, *ante*, p. 468.

(*q*) See these sections, *ante*, pp. 509—519 *et seq.*

(*r*) *I.e.*, out of the Poor Rate.

(*s*) See note (*h*), *ante*, p. 2108.

(*t*) As to these provisions, see the P. H. A. 1875, ss. 233—241, *ante*, pp. 519—537 *et seq.*

(*u*) Reference may be made to a definition of "public meeting" in s. 4 of the Law of Libel Amendment Act, 1888. Whether a meeting of a council to which the public are admitted can be said to be a public meeting within the meaning of this Act is at any rate doubtful ; but presumably a parish meeting falls within it. A meeting is not "unlawful" merely because it is held upon a highway (*Burden* v. *Rigler*, [1911] 1 K. B. 337) ; see as to such meetings the cases there cited in argument, and *M'Ara* v. *Edinburgh Magistrates*, [1913] S. C. 1059.

46 & 47 Vict. c. 51.

ment for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883, and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

(2) Any person who incites others to commit an offence under this section shall be guilty of a like offence.

Short title

2. This Act may be cited as the Public Meeting Act, 1908.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

(8 EDW. 7, C. 69.)

An Act to consolidate the Companies Act, 1862, *and the Acts amending it.* [21st December 1908.]

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

107 (*v*).—(1) Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures (*x*) of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up (*y*), the debts which in every winding-up are under the provisions (*z*) of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures (*a*).

(2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped (*b*) as far as may be out of the assets of the company available for payment of general creditors.

* * * * *

Preferential payments.

209 (*c*).—(1) In a winding up there shall be paid in priority to all other debts—

(*v*) It was held in *Richards* v. *Kidderminster Overseers*, [1896] 2 Ch. 212, that the Preferential Payments in Bankruptcy Act, 1888, *ante*, p. 1836, which then applied also to companies being wound up, did not give a preferential charge in respect of rates where a receiver for debenture holders had taken possession of the goods of a liquidating company. In consequence of this decision, the Preferential Payments in Bankruptcy Amendment Act, 1897, was passed. That Act (which was held not to be retrospective in *In re Waverley Typewriter, Ltd.*, [1898] 1 Ch. 699) has now been repealed, and re-enacted in practically identical language in the present section and s. 209 (2) (b).

(*x*) Debentures include debenture stock (s. 285).

(*y*) If the company is being wound up, s. 209 (2) (b), *post*, makes the rates a preferential charge.

(*z*) For such provisions see s. 209, *post.*

(*a*) A judgment in a debenture holders' action formerly directed an inquiry as to creditors entitled to preferential payment under the Acts of 1888 and 1897. (*In re Meaby & Co.* (1899), W. N. 58; *In re Birmingham Breweries, Ltd.* (1899), W. N. 92.) The later practice was for every order appointing a receiver in such an action to direct him to pay forthwith the debts of the company having by virtue of the Acts priority over the debentures (Practice Note, [1900] W. N. 58; Seton, 6th ed., vol. 3, p. 2040). The order should now include a reference to s. 110 of the National Insurance Act, 1911 (see note (*c*), *infra*).

It was held that the repealed enactment applied where a receiver appointed by the debenture holders under a power contained in the debentures had taken possession, though no receiver had been appointed by the court (*In re Barnby's, Ltd.* (1899), W. N. 103).

(*b*) As to such recoupment, see *In re Mannesman Tube Co.*, [1901] 2 Ch. 93.

(*c*) The present Act repealed the Preferential Payments in Bankruptcy Act, 1888, *ante*, p. 1836, so far as it related to companies, and the amending Act of 1897 (see note *v*), *supra*),

(a) All parochial or other local rates (*d*) due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

(b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and

(c) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and

(d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act.

(2) The foregoing (*e*) debts shall—

(a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures (*f*) under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

which only applied to companies. It re-enacts their provisions without substantial alteration.

Until the Act of 1888 came into force, rates due and payable before the commencement of a winding up had no similar priority (notwithstanding s. 10 of the Judicature Act, 1875, and s. 40 of the Bankruptcy Act, 1883) (*Re Art Engraving Co., Ltd.* (1889), 60 L. T. 381).

As to rates made during the winding up, see *In re Blazer Fire Lighter Co.*, [1895] 1 Ch. 402, following *In re National Arms and Ammunition Co.*, (1885) 28 Ch. D. 474; see also *In re International Marine Hydropathic Co.* (1884), 28 Ch. D. 470. For the earlier rule upon the point, see *In re West Hartlepool Iron Co.* (1876), 34 L. T. 568; *In re Watson, Kipling & Co.* (1883), 23 Ch. D. 500. As to obtaining leave to distrain for rates during a winding up by or under the supervision of the court, see ss. 140, 142, 211 of the present Act, and *In re Watson, Kipling & Co., supra; In re International Marine Hydropathic Co., supra; In re National Arms and Ammunition Co., supra; Re Dry Docks Corporation* (1888), 39 Ch. D. 306.

As to distraint upon a liquidator personally if he is the rated occupier, see conflicting decisions in *R.* v. *Curzon* (1881), 46 L. T. 159, and *Dent* v. *Commondale Overseers* (1892), 56 J. P. 519; and *cf. In re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640.

As to the application of this section to the winding up of an unregistered company, see s. 268. As to companies within the Stannaries, see ss. 240, 241, and the National Insurance Act, 1911, s. 110 (2); note that s. 9 of the Stannaries Act, 1887, therein referred to had been previously repealed by the present Act.

(*d*) As to the meaning of parochial or other local rates, clerk or servant, see *ante*, p. 1836.

(*e*) At the present date, certain contributions due from an employer under the National Insurance Act, 1911, have equal priority (see s. 110 thereof).

(*f*) Debentures include debenture stock (s. 285).

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date herein-before in this section referred to is—

(a) In the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(b) in any other case (*g*), the date of the commencement of the winding up.

TRADE BOARDS ACT, 1909.

(9 EDW. 7, c. 22.)

An Act to provide for the Establishment of Trade Boards for certain Trades. [20th October 1909.]

Limited operation of minimum rate which has not been made obligatory.

7 (*h*).—(1) Where any minimum rate of wages has been fixed by a Trade Board, but is not for the time being obligatory under an order of the Board of Trade made in pursuance of this Act, the minimum rate shall, unless the Board of Trade direct to the contrary in any case in which they have directed the Trade Board to reconsider the rate, have a limited operation as follows:—

(a) In all cases to which the minimum rate is applicable an employer shall, in the absence of a written agreement to the contrary, pay to the person employed wages at not less than the minimum rate, and, in the absence of any such agreement, the person employed may recover wages at such a rate from the employer;

(b) Any employer may give written notice to the Trade Board by whom the minimum rate has been fixed that he is willing that that rate should be obligatory on him, and in that case he shall be under the same obligation to pay wages to the person employed at not less than the minimum rate, and be liable to the same fine for not doing so, as he would be if an order of the Board of Trade were in force making the rate obligatory; and

(c) No contract involving employment to which the minimum rate is applicable shall be given by a Government department or local authority to an employer unless he has given notice to the Trade Board in accordance with the foregoing provision:

Provided that in case of any public emergency the Board of Trade may by order, to the extent and during the period named in the order, suspend the operation of this provision as respects contracts for any such work being done or to be done on behalf of the Crown as is specified in the order.

(*g*) By s. 183 a voluntary winding up is deemed to commence at the time of the passing of the resolution authorising the winding up; *i.e.*, of the extraordinary or confirmatory resolution, as the case may be.

(*h*) A reference to a Circular of the L. G. B. printed in Appendix II., *post*, tit. "Contracts," will show how in certain cases the provisions of this section may affect local authorities.

(2) A Trade Board shall keep a register of any notices given under this section:

The register shall be open to public inspection without payment of any fee, and shall be evidence of the matters stated therein:

Any copy purporting to be certified by the secretary of the Trade Board or any officer of the Trade Board authorised for the purpose to be a true copy of any entry in the register shall be admissible in evidence without further proof.

THE ELECTRIC LIGHTING ACT, 1909 (*i*).

(9 Edw. 7, c. 34.)

An Act to amend the Acts relating to Electric Lighting. [25th November 1909.]

Compulsory acquisition of land for generating stations.

1.—(1) The Board of Trade may by Provisional Order authorise any local authority, company, or person, who is authorised by the same or any previous Provisional Order or by Act of Parliament to supply electricity in any area, to acquire compulsorily (*k*), or to use, for the purpose of a generating station any land specified in the Order, whether situated within or without the area of supply, and, in the case of a local authority, whether situated within or without their district.

(2) For the purpose of the acquisition of land authorised to be taken compulsorily under any such Provisional Order, the provisions of the Lands Clauses Acts which relate to the purchase and taking of lands otherwise than by agreement, and to the entry upon lands by the promoters of the undertaking, are, subject to the modifications set out in the First Schedule (*l*) to this Act, incorporated with the Electric Lighting Acts, as well as the provisions of those Acts already incorporated by the Electric Lighting Act, 1882.

(3) Rules (*m*) made by the Board of Trade under section five of the Electric Lighting Act, 1882, shall provide for proper notice being given of an application for a Provisional Order, by which it is proposed to authorise the compulsory acquisition or use of land for the purpose of a generating station, to owners, lessees, and occupiers of land, and also for public notice being given of the proposal by advertisement.

Construction of generating station on land acquired by agreement.

2. It shall not be lawful for any undertakers after the passing of this Act, except with the consent of the Board of Trade, to construct any generating station on any land acquired by them after the thirty-first day of March one thousand nine hundred and nine unless the construction is authorised and the land is specified in a special Act or Provisional Order, and the Board of Trade shall not in any case give such consent until notice has been given, by advertisement or otherwise, as the Board of Trade may direct, to the local authority of the district in which the land is situate, and to owners and lessees of land situate within three hundred yards of the land upon which the generating station is to be constructed, and an opportunity has been given to such local authority, owners, and lessees, of stating any objections they may have thereto (*n*).

(*i*) This Act amends the Electric Lighting Acts, 1882 and 1888, *ante*, pp. 1736, 1806.

(*k*) Under the previous Acts there was no power to acquire land compulsorily; for definition of "generating station," see s. 25, *post*. See s. 24 as to land belonging to gas or water undertakers.

(*l*) See this Schedule, *post*, p. 2121.

(*m*) See such rules, dated July 29th, 1910, *ante*, p. 1754.

(*n*) Formerly, though undertakers had no powers of compulsory purchase, they were under no such restriction so long as they could purchase by agreement.

This section shall not apply to any station for transforming, converting or distributing electrical energy.

Breaking up streets, &c., outside area of supply.

3. For the purpose of enabling electricity to be brought into an area of supply from a generating station belonging to any undertakers situated outside that area, the Board of Trade may by Provisional Order apply to any roads, railways, or tramways situated outside that area the provisions of the Electric Lighting Acts which authorise, or enable the Board of Trade to authorise, the breaking up of any road, railway, or tramway, so far as those provisions do not already so apply (*o*) :

Provided that a Provisional Order authorising the breaking up of roads outside the area of supply shall not be granted by the Board of Trade except with the consent of the local authority in whose district the road is situate, unless the Board of Trade, in any case in which the consent of any such local authority is refused, are of opinion that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in that case they shall make a special report to Parliament stating the grounds on which they have dispensed with the consent.

Supply in bulk.

4.—(1) The Board of Trade, unless they are of opinion that, by reason of the character or magnitude of the proposed undertaking, the matter ought to be dealt with by private Bill, may by Provisional Order—

(a) authorise any local authority or company to supply electricity in bulk (*p*) ;

(b) provide for any supply so authorised being compulsory ; and

(c) make such other provisions as appear to them necessary for adapting the Electric Lighting Acts to any case where a local authority or company are authorised to supply electricity in bulk, including the application to roads, railways, and tramways along the route along which lines are authorised to be laid for the purpose of giving the supply in bulk of the provisions of those Acts which authorise or enable the Board of Trade to authorise the breaking up of any road, railway, or tramway :

Provided that a Provisional Order authorising the breaking up of roads outside the area of supply of the local authority or company by whom the supply is to be given shall not be granted by the Board of Trade except with the consent of the local authority in whose district the road is situate, unless the Board of Trade, in any case in which the consent of any such local authority is refused, are of opinion that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in that case they shall make a special report to Parliament stating the ground on which they have dispensed with the consent.

(2) If the Board of Trade refuse to grant a Provisional Order under this section, on the ground that the matter ought to be dealt with by a private Bill, the notices published and served for the purposes of the proposed Order shall, subject to Standing Orders, be held to have been published and served for a private Bill applying for similar powers :

Provided that the applicants for the Order shall, by notice served in the prescribed manner and within the prescribed time, inform all opponents of their intention to proceed by way of private Bill, and, subject to Standing Orders, the application for a Provisional Order shall be deemed and taken

(*o*) See ss. 12 *et seq.* of the Electric Lighting Act, 1882, *ante*, p. 1743 ; for definition of "road," see s. 25, *post*.

(*p*) See s. 25, *post*, for definition of "supply in bulk" ; and see s. 20, *post*, as to the construction of provisions prohibiting association where undertakers desire to take a supply in bulk from other undertakers.

to be a petition for leave to bring in a private Bill, and the applicants shall also give such additional notice (if any) as may be required by Standing Orders.

(3) The Board of Trade may, if they think fit, by order permit any undertakers to supply electricity in bulk to any other undertakers upon such terms and subject to such conditions as may be specified in the order, if the supply can be given without breaking up any streets except such as the undertakers giving or the undertakers receiving the supply are authorised to break up; but the Board of Trade shall not in any case make such an order until notice of the intention to make the order has been given by advertisement or otherwise as the Board of Trade may direct, and an opportunity has been given to any person who appears to the Board to be affected of stating any objections he may have thereto.

Supply of electricity to railways, tramways, and canals partly outside area of supply.

5.—(1) Any local authority, company, or person authorised to supply electricity in any area may, with the consent of the Board of Trade, supply at any point within that area electricity for the purposes of haulage or traction on any railway, tramway, or canal situate partly within and partly without that area, and for the purposes of lighting vehicles and vessels used on any such railway, tramway, or canal; but the Board of Trade shall not in any case give any such consent until notice of the application for the consent has been given by advertisement or otherwise in such manner as the Board of Trade may direct, and an opportunity has been given to any person who appears to the Board to be affected of stating any objections he may have thereto.

(2) The Board of Trade may by Provisional Order authorise any such local authority, company, or person so to supply electricity to be used for purposes incidental to the working or lighting of the railway, tramway, or canal, other than the purposes aforesaid.

(3) A company, local authority, or body receiving a supply of electricity under this section shall not use the electricity in such manner as to cause or to be likely to cause any interference with Government observatories or laboratories, or observatories or laboratories now or hereafter erected, owned, or managed in pursuance of any present or future statutory enactment, but this subsection shall not apply to any such company, local authority, or body who, by any Act of Parliament, or Order confirmed by or having the effect of an Act of Parliament, containing provisions for the protection of such observatories or laboratories, are authorised to use electricity for the purposes for which a supply is authorised to be given under this section.

Supply to premises outside area of supply in certain cases.

6.—(1) Where it is proved to the satisfaction of the Board of Trade that the occupier of any premises is desirous of obtaining a supply of electricity from any undertakers within whose area of supply those premises are not situate, the Board of Trade may if the local authority within whose district the premises are situate, and the undertakers (if any) authorised to supply electricity to such premises, consent, by order permit the first-mentioned undertakers to give a supply to those premises on such terms and subject to such conditions as the Board think fit:

Provided that, if in the opinion of the Board of Trade any consent required by this subsection is unreasonably withheld, the Board of Trade may proceed as if such consent had been given.

(2) An order given by the Board of Trade under this section may, for the purpose of enabling a supply to be given thereunder, confer any such powers and impose any such duties on the undertakers as would have been conferred or imposed by the Electric Lighting Acts and as might have been conferred or imposed by Provisional Order if the premises and the route along which lines are to be laid for the purpose of giving the supply were within the area

of supply of the undertakers, anything in the special Act or Order relating to the undertaking to the contrary notwithstanding.

(3) If the undertakers on whom powers are conferred by an order under this section are not a local authority, the works and lines erected and laid under the powers so conferred shall, so long as the order remains in force, be deemed, for the purposes of the provisions as to purchase applicable to the undertaking, to form part of the undertaking within the district of the local authority which comprises the area of supply of the undertakers, or, if that area is comprised within the districts of more than one local authority, within such of those districts as the Board of Trade may determine.

(4) Nothing in this section shall enable the Board of Trade, without the consent of the undertakers within whose area of supply the premises are situate, to give such permission as aforesaid to any undertakers where the last-mentioned undertakers are by any Act of Parliament specifically prohibited from supplying electricity within the area of the first-mentioned undertakers.

Provisions as to right of local authority to purchase.

7.—(1) Where the generating station, mains, or other works of a company used solely for supplying electricity within the district of a local authority are situated outside the district of that local authority, the generating station, mains, and other works so used shall for the purposes of the provisions of the Electric Lighting Acts, and any Provisional Order conferring on local authorities power to purchase undertakings (*q*), be deemed to be situated within the district of that local authority, and, where any generating station, mains, and other works are used solely for supplying electricity within the districts of two or more local authorities, but are not situated within any of those districts, the Board of Trade may, on the application of all or any of those authorities, by Provisional Order apply this provision subject to such adaptations as the circumstances of the case may require :

Provided that this subsection shall not, except by agreement between the local authority and the company concerned, apply to any generating station, mains, or other works authorised by a special Act passed before the passing of this Act.

(2) Any local authority having power under the Electric Lighting Acts or any Provisional Order to purchase so much of the undertaking of a company as is within the district of that local authority may, with the consent of and upon such terms and conditions as may be approved by the Board of Trade, and, in the case of an undertaking authorised before the commencement of this Act, with the consent of the company, transfer their rights of purchase to any other local authority having power to purchase so much of the same undertaking as is within the district of that last-mentioned local authority, and the deed of transfer may contain such consequential provisions as may be necessary for giving effect to the transfer.

Exercise of electric lighting powers by authorities jointly.

8. The Board of Trade may, with the concurrence of the Local Government Board, by Provisional Order make such provisions as appear to them necessary or expedient, by the constitution of a joint committee or joint board or otherwise, for the joint exercise of all or any of the powers under the Electric Lighting Acts, or this Act, or any Provisional Order, by two or more local authorities as respects any area of supply consisting of the whole or parts of the districts of those authorities, in any case where it appears to them that the joint exercise of those powers would be expedient, and any such Provisional Order may contain such provisions as may appear necessary or proper for adapting any of the provisions of the Electric Lighting Acts, or this Act, or any such Provisional Order, to the case of any committee or board so constituted.

(*q*) As to an authority's power to purchase, see s. 2 of the Electric Lighting Act, 1888, *ante*, p. 1807.

9. The Board of Trade may grant a Provisional Order notwithstanding that the notice required by section four (*r*) of the Electric Lighting Act, 1882, to be given to a local authority on or before the first day of July has not been given in the case of any local authority which waives its right to receive such a notice, and no such notice need be given to the local authority of a district in which it is not intended to take power to distribute electricity. July notices.

10.—(1) With a view to making five years the ordinary period of revision of maximum price and allowing representations as to revision to be made by consumers, subsection (2) of section thirty-two of the Schedule (*s*) to the Electric Lighting (Clauses) Act, 1899, shall, for the purpose of incorporation with any Act or Order passed or confirmed after the passing of this Act, be read as if the words "five years" were substituted for the words "seven years," and the words "or such number of consumers, not less than twenty, as the Board of Trade consider sufficient, having regard to the population of the area of supply," were inserted after the words "either the local authority or the undertakers." Revision of maximum price.

(2) Where any Act or Provisional Order passed or confirmed before the commencement of this Act enables the Board of Trade to revise or vary any maximum prices to be charged for electricity, that Act or Order shall be construed—

(a) so as to enable the revision or variation to take place at an interval of five years after the commencement of the Act or Order, or the last revision, in cases where a longer interval is fixed by the Act or Order; and

(b) so as to enable the power of revision or variation to be exercised on the representation of such number of consumers, not less than twenty, as the Board of Trade consider sufficient, having regard to the population of the area of supply, in cases where under the Act or Order such a power either cannot be exercised on such a representation, or can be exercised only on the representation of a number of consumers greater than twenty.

11.—(1) The sections set out in the Second Schedule to this Act shall be substituted for sections forty-nine, fifty, fifty-one, and fifty-three of the Schedule (*s*) to the Electric Lighting (Clauses) Act, 1899, as incorporated with any Act or Order passed or confirmed after the commencement of this Act. Certification of meters.

(2) The provisions contained in the sections so set out shall, subject to such adaptations (if any) as may be necessary, be substituted for any corresponding provisions as to the use, examination, and certification of meters, and their connection and disconnection with electric lines, contained in or incorporated with any special Act or Provisional Order relating to the supply of electricity passed or confirmed before the commencement of this Act.

12. For the purposes of section nine (*t*) of the Electric Lighting Act, 1882, the accounts of any undertakers being a local authority shall be made up to the thirty-first day of March in each year, and accordingly as respects those accounts the thirtieth day of June shall be substituted in that section for the twenty-fifth day of March, and the thirty-first day of March for the thirty-first day of December: Provided that, if any such undertakers show to the Board of Trade that some other dates are, owing to special circumstances, Accounts of local authorities.

(*r*) See this section, *ante*, p. 1737.
(*s*) See this Schedule, *ante*, p. 1935.
(*t*) See this section, *ante*, p. 1741.

more convenient in their case than the thirty-first day of March and the thirtieth day of June, the Board of Trade may substitute such other dates for the said thirty-first day of March and thirtieth day of June, and this section shall as respects those undertakers be construed with the substituted dates.

Return by Board of Trade as to auditors' reports.

13. The Board of Trade shall from time to time make a return to Parliament giving such particulars as they may think proper with regard to the reports (*u*) made by any auditors appointed by them to audit the accounts of any undertakers, and any action taken in such reports by the Board and by the undertakers.

Restriction on transfer of powers, &c., of undertakers.

14.—(1) A local authority, company, or person who have obtained a licence, order, or special Act for the supply of electricity shall not, by transfer or otherwise, divest themselves of any of the powers, rights, or obligations conferred or imposed upon them by the Electric Lighting Acts, or by any licence, order, or special Act, otherwise than under and in accordance with a provision contained in a licence, order, or special Act authorising such a divestiture.

(2) Section eleven (*v*) of the Electric Lighting Act, 1882, shall be repealed from " but no local authority " to the end of the section.

Supply of electricity to premises having separate supply.

15. Notwithstanding anything in the Electric Lighting Acts or in any Act of Parliament or Provisional Order authorising an undertaking, a person shall not be entitled (*x*) to demand or to continue to receive from undertakers authorised to supply electricity in any area a supply of electricity for any premises having a separate supply, unless he has agreed with the undertakers to pay to them such minimum annual sum as will give them a reasonable return on the capital expenditure, and will cover other standing charges incurred by them in order to meet the possible maximum demand for those premises ; the sum to be so paid shall be determined in default of agreement by arbitration.

Electric lines, &c., let on hire, though fixed to premises, to remain the property of undertakers.

16. All electric lines, fittings, apparatus, and appliances let by any undertakers on hire or belonging to any undertakers, but being in or upon premises of which the undertakers are not in possession, shall, whether they be or be not fixed or fastened to any part of any premises in or upon which they may be situate, or to the soil under any such premises, at all times continue to be the property of, and be removable by the undertakers, and sections twenty-four and twenty-five of the Electric Lighting Act, 1882, shall extend and apply to all such electric lines, fittings, apparatus, and appliances: Provided that such electric lines, fittings, apparatus, or appliances have upon them respectively a distinguishing metal plate affixed to a conspicuous part thereof, or a distinguishing brand or other mark conspicuously impressed or made thereon, sufficiently indicating the undertakers as the actual owners thereof.

For the purposes of this section, electric lines, fittings, apparatus, and appliances disposed of by the undertakers on terms of payment by instalments shall, until the whole of the instalments have been paid, be deemed to be electric lines, fittings, apparatus, and appliances let on hire by the undertakers.

Nothing in this section shall affect the amount of the assessment for rating of any premises upon which any electric lines, fittings, apparatus, or appliances are or shall be fixed.

(*u*) See s. 30 of the Electric Lighting Act, 1882, *ante*, p. 1749, as to the annual report to be made by the Board.

(*v*) See s. 11 of the Electric Lighting Act, 1882, and note thereto, *ante*, p. 1742.

(*x*) As to the general obligation to supply, see s. 19 of the Electric Lighting Act, 1882, *ante*, p. 1746.

17.—(1) Twenty-four hours' notice in writing shall be given to the undertakers by every consumer before he quits any premises supplied with electrical energy by the undertakers, and, in default of such notice, the consumer so quitting shall be liable to pay to the undertakers the money accruing due in respect of such supply up to the next usual period for ascertaining the register of the meter on such premises, or the date from which any subsequent occupier of such premises may require the undertakers to supply electrical energy to such premises, whichever shall first occur.

Notice to be given to undertakers before removing.

(2) Notice to the effect of this section shall be endorsed upon any demand note for charges for electrical energy.

18. The undertakers may refuse (*y*) to supply electrical energy to any person whose payments for the supply of electrical energy are for the time being in arrear (not being the subject of a boná fide dispute), whether any such payments be due to the undertakers in respect of a supply to the premises in respect of which such supply is demanded or in respect of other premises.

Power to refuse to supply electrical energy in certain cases.

19. Electrical energy shall be deemed to be goods, wares, or merchandise for the purposes of section fifty-nine of the Stamp Act, 1891 (*z*) (which makes certain contracts chargeable with stamp duty as conveyances on sale), and also for the purposes of the exemption numbered 3 under the heading "Agreement or any memorandum of an agreement" contained in the First Schedule to that Act.

Exemption of agreements for the supply of electricity from stamp duty.

20. For removing doubts, it is hereby declared that so much of any Provisional Order or special Act, or of the Schedule to the Electric Lighting (Clauses) Act, 1899 (*zz*), as incorporated with any such Order or Act, as prohibit undertakers from associating themselves with any company or person supplying energy under any licence, Provisional Order, or special Act unless the undertakers are authorised by Parliament to do so, shall not be construed as prohibiting the undertakers from taking a supply of electricity in bulk (*a*) from any company or person authorised to give such a supply.

Construction of provisions prohibiting association.

21. Money borrowed (*b*) under the Electric Lighting Acts shall not be reckoned as part of the total debt of a local authority for the purpose of any limitation on borrowing under the enactments relating to borrowing by the local authority.

Provision as to borrowing by local authorities.

22.—(1) With a view to the protection of the royal palaces, parks, and gardens, museums, and other public buildings, and their contents (in this section referred to as "the protected premises"), the Commissioners of Works and their engineer, or other officer duly authorised in writing under the hand of their secretary, may from time to time enter upon and inspect any generating station of any undertakers, and, if on such inspection it should appear to the Commissioners that proper precautions are not being adopted for the due consumption of smoke, and for preventing as far as reasonably practicable the evolution of oxides of sulphur, and generally for the prevention of nuisance in relation to the protected premises, they may, without prejudice to any other remedy, require the undertakers forthwith to carry out such works and to do such things as are necessary in the circumstances.

For the protection of the Commissioner of Works.

(*y*) See previous note.

(*z*) As to the stamping of agreements for the supply of electricity, see also *Durham (County of) Electrical Power Co., Ltd.* v. *Inland Revenue Commissioners*, [1909] 2 K. B. 604; *British Electric Traction Co., Ltd.* v. *Inland Revenue Commissioners*, [1902] 1 K. B. 441.

(*zz*) See s. 2 (3), p. 1919, *ante*.

(*a*) As to the meaning of a "supply in bulk," see s. 25, *post*.

(*b*) As to borrowing powers, see s. 8 of the Electric Lighting Act, 1882, *ante*, p. 1740.

(2) The undertakers shall give all reasonable facilities for such inspection to the Commissioners and their engineer or other officer as aforesaid.

(3) Any dispute arising between the Commissioners and the undertakers in relation to any of the provisions of this section shall be determined by arbitration.

This section shall not apply to the station of the Westminster Electric Supply Corporation, Limited, at Horseferry Road, in the city of Westminster.

Prohibiting unauthorised undertakers from competing with statutory undertakers.

23 (*c*). Where in any area a local authority, company, or person is authorised to supply electricity under Act of Parliament or under licence or Provisional Order granted under the Electric Lighting Acts, it shall not, after the passing of this Act, be lawful for any other local authority, company, or person to commence to supply or distribute electricity within the same area unless such supply or distribution is authorised by Act of Parliament, or by licence or Provisional Order granted in terms of the Electric Lighting Acts: Provided that this section shall not prevent any company or person from affording a supply of electrical energy to any other company or person where the business of the company or person affording the supply is not primarily that of the supply of electrical energy to consumers:

Provided also that this section shall not prevent any company who at the passing of this Act are empowered by their memorandum of association to generate electrical energy from affording a supply to a railway company for purposes incidental to that company's undertaking other than the conveyance of public traffic.

For the protection of gas undertakers.

24. Nothing in this Act shall enable the Board of Trade by Provisional Order to authorise the compulsory acquisition of any land which, at the date of the first publication of the notice for the Order, belongs to any gas or water undertakers and is used or authorised to be used by them for the purposes of their undertaking.

Definitions.

25. In this Act, unless the context otherwise requires,—

The expression "Provisional Order" means a Provisional Order under the Electric Lighting Acts:

The expression "Electric Lighting Acts" means—

(a) As respects England and Ireland, the Electric Lighting Acts, 1882 and 1888; and

(b) As respects Scotland, the Electric Lighting Acts, 1882 and 1888, the Electric Lighting (Scotland) Act, 1890, and the Electric Lighting (Scotland) Act, 1902:

The expression "authorised" means authorised by Act of Parliament or Provisional Order (*d*):

The expression "area of supply" means any area within which any local authority, company, or person is authorised to supply electricity:

The expression "undertakers" means any local authority, company, or person, authorised to supply electricity to whom the Electric Lighting Acts apply:

The expression "road" includes any street (*e*) as defined by the Electric Lighting Act, 1882:

The expression "generating station" includes any station for generating, transforming, converting, or distributing electricity:

(*c*) See s. 1 of the Electric Lighting Act, 1888, *ante*, p. 1806.

(*d*) Licences to supply electricity under the Act of 1882 are practically obsolete.

(*e*) See definition of "street" in s. 32, *ante*, p. 1750.

The expression "to supply electricity in bulk" means to supply electricity—
(a) to any local authority, company, or person authorised to distribute electricity to be used for the purposes of distribution; or
(b) to any local authority authorised by any general or special Act to undertake or contract for the lighting of streets, bridges, or public places, to be used for the purposes of lighting streets, bridges, and public places.

26. [*Application to Scotland and Ireland.*]

27.—(1) This Act may be cited as the Electric Lighting Act, 1909. Short title, construction, and commencement.

(2) This Act and the Electric Lighting Acts (*f*) shall be construed together as one Act, and may be cited as the Electric Lighting Acts, 1882 to 1909.

(3) This Act shall come into operation on the first day of April nineteen hundred and ten.

SCHEDULES.

FIRST SCHEDULE.

(Section I.)

Modifications of the Lands Clauses Acts.

The following modifications shall have effect in the construction of the provisions of the Lands Clauses Acts incorporated by this Act for the purposes of the Electric Lighting Acts:—

(a) The expression "special Act" means the Electric Lighting Acts, inclusive of any Provisional Order authorising the compulsory acquisition of land, except that the period of three years mentioned in section one hundred and twenty-three of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), shall be calculated from the passing of the Act confirming the Provisional Order; and

(b) The expressions "the promoters" and "the undertaking" mean respectively the undertakers and the undertaking under the Electric Lighting Acts, and the expression "company" in the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, and the Railways Act (Ireland), 1864, means the undertakers under the Electric Lighting Acts; and

(c) The expression "land" includes easements in or relating to land.

SECOND SCHEDULE.

(Section XI.)

Sections to be substituted for Sections 49, 50, 51, and 53 of the Schedule to the Electric Lighting (Clauses) Act, 1899.

"49. The amount of energy supplied by the undertakers to any ordinary consumer under the special Order, or the electrical quantity contained in the supply (according to the method by which the undertakers elect to charge), hereinafter referred to as 'the value of the supply,' shall, except as otherwise agreed between the consumer and the undertakers, be ascertained by means of an appropriate meter duly certified under the provisions of the special Order, and fixed and connected with the service lines in some manner approved by the Board of Trade. Meters to be used except by agreement.

"50. A meter shall be considered to be duly certified under the provisions of the special Order if it be certified by an electric inspector appointed under the special Order to be a meter capable of ascertaining the value of the supply within such limits of error as may, as respects meters of the class to which the Meter to be certified.

(*f*) *I.e.*, the Acts of 1882 and 1888, *ante*, pp. 1736, 1803 (see s. 25).

meter belongs, be allowed by the Board of Trade, and to be of some construction and pattern approved by the Board of Trade, and every such meter is hereinafter referred to as a 'certified meter': Provided that, where any alteration is made in any certified meter, that meter shall cease to be a certified meter unless and until it is again certified as a certified meter under the provisions of the special Order.

Inspector to certify meter.

"51. An electric inspector, on being required to do so by the undertakers or by any consumer, and on payment of the prescribed fee by the party so requiring him, shall examine any meter used or intended to be used for ascertaining the value of the supply, and shall certify it as a certified meter if he considers it entitled to be so certified, and the inspector shall, on the like requisition and payment, examine the manner in which any such meter has been fixed and connected with the service lines, and shall certify that it has been fixed and connected with the service lines in some manner approved by the Board of Trade, if he considers that it is entitled to be so certified.

Meters not to be connected or disconnected without notice.

"53. The undertakers shall not, nor shall any consumer, connect any meter used or to be used under the special Order for ascertaining the value of the supply with any electric line through which energy is supplied by the undertakers, or disconnect any such meter from any such electric line, unless the one has given to the other not less than forty-eight hours' notice in writing of the intention to do so, and the undertakers or any consumer acting in contravention of this section shall be liable for each offence to a penalty not exceeding forty shillings."

THE DEVELOPMENT AND ROAD IMPROVEMENT FUNDS ACT, 1909.

(9 EDW. 7, c. 47.)

An Act to promote the Economic Development of the United Kingdom and the Improvement of Roads therein. [3rd December 1909.]

PART I.

DEVELOPMENT.

Power to make advances for certain purposes.

1.—(1) The Treasury may, upon the recommendation of the Development Commissioners appointed under this Act, make advances to a Government Department, or through a Government Department to a public authority, university, college, school, or institution, or an association of persons or company not trading for profit, either by way of grant or by way of loan, or partly in one way and partly in the other, and upon such terms and subject to such conditions as they may think fit, for any of the following purposes:—

(a) Aiding and developing agriculture and rural industries by promoting scientific research, instruction and experiments in the science, methods and practice of agriculture (including the provision of farm-institutes (*g*)), the organisation of co-operation, instruction in marketing produce, and the extension of the provision of small holdings; and by the adoption of any other means which appear calculated to develop agriculture and rural industries;

(b) Forestry (including (1) the conducting of inquiries, experiments, and research for the purpose of promoting forestry and the teaching of methods of afforestation; (2) the purchase and planting of land found after inquiry to be suitable for afforestation);

(*g*) As to grants toward "farm institutes," see a circular of the Board of Education, dated July 14th, 1911.

(c) The reclamation and drainage of land;
(d) The general improvement of rural transport (including the making of light railways but not including the construction or improvement of roads);
(e) The construction and improvement of harbours;
(f) The construction and improvement of inland navigations;
(g) The development and improvement of fisheries;

and for any other purpose calculated to promote the economic development of the United Kingdom.

(2) All applications for advances under this Part of this Act shall be made to the Treasury in accordance with regulations (*h*) made by the Treasury.

(3) No advance shall be made for any purpose which might be carried out under the provisions of the Small Holdings and Allotments Act, 1908, upon any terms or conditions different from those contained in that statute except for some special reason which shall be stated in the annual report of the Development Commissioners.

Establishment of development fund.

2.—(1) All advances, whether by way of grant or by way of loan, made under this Part of this Act shall be made out of a fund, called the development fund, into which shall be paid—

(a) Such moneys as may from time to time be provided by Parliament for the purposes of this Part of this Act;
(b) The sums issued out of the Consolidated Fund under this section; and
(c) Any sums received by the Treasury by way of interest on or repayment of any advance made by way of loan under this Part of this Act, and any profits or proceeds derived from the expenditure of any advance which by the terms on which the advance was made are to be paid to the Treasury.

(2) *There shall be charged on and issued out of the Consolidated Fund, or the growing produce thereof, in the year ending the thirty-first day of March nineteen hundred and eleven, and in each of the next succeeding four years, the sum of five hundred thousand pounds* (*i*).

(3) The Treasury may accept any gifts made to them for all or any of the purposes for which advances may be made under this Part of this Act and, subject to the terms of gift, apply them for the purposes of this Part of this Act in accordance with regulations made by the Treasury.

(4) The Treasury shall cause an account to be prepared and transmitted to the Comptroller and Auditor-General for examination, on or before the thirtieth day of September in every year, showing the receipts into and issues out of the development fund in the financial year ended on the thirty-first day of March preceding, and the Comptroller and Auditor-General shall certify and report upon the same, and such account and report shall be laid before Parliament by the Treasury on or before the thirty-first day of January in the following year if Parliament be then sitting, and, if not sitting, then within one week after Parliament shall be next assembled.

(5) Payments out of and into the development fund, and all other matters relating to the fund and the moneys standing to the credit of the fund, shall be made and regulated in such manner as the Treasury may by minute to be laid before Parliament direct.

(6) The Treasury may from time to time invest any moneys standing to the credit of the development fund in any securities in which trustees are by law authorised to invest trust funds.

(*h*) See Regulations dated June 13th, 1910.

(*i*) This sub-section was repealed as from March 31st, 1912, by the Finance Act, 1911. Section 16 (1) (a) of that Act (see *post*, p. 2138) provided for payment into the fund of one and a half million pounds instead of the three sums due in 1913, 1914, and 1915.

Constitution of Development Commissioners.

3.—(1) For the purposes of this Part of this Act it shall be lawful for His Majesty by warrant under the sign manual to appoint five (*k*) Commissioners, to be styled the Development Commissioners, of whom one to be appointed by His Majesty shall be chairman.

(2) Subject to the provisions of this section, the term of office of a Commissioner shall be ten years. One Commissioner shall retire (*k*) every second year, but a retiring Commissioner may be reappointed. The order in which the Commissioners first appointed are to retire shall be determined by His Majesty. On a casual vacancy occurring by reason of the death, resignation, or incapacity of a Commissioner, or otherwise, the person appointed by His Majesty to fill the vacancy shall continue in office until the Commissioner in whose place he was appointed would have retired, and shall then retire.

(3) There shall be paid to not more than two of the Commissioners such salaries, not exceeding in the aggregate three thousand pounds in each year, as the Treasury may direct.

(4) The Commissioners may act by three (*k*) of their number and notwithstanding a vacancy in their number, and, subject to the approval of the Treasury, may regulate their own procedure.

(5) The Commissioners may, with the consent of the Treasury, appoint and employ such officers and servants for the purposes of this Part of this Act as they think necessary, and may remove any officer or servant so appointed and employed, and there shall be paid to such officers and servants such salaries or remuneration as the Commissioners, with the consent of the Treasury, may determine.

(6) The salaries of the Commissioners and the salaries or remuneration of their officers and servants, and any expenses incurred by the Commissioners in the execution of their duties under this Part of this Act, to such amount as may be sanctioned by the Treasury, shall be defrayed out of the development fund (*l*).

Powers and duties of Commissioners.

4.—(1) Every application for an advance under this Part of this Act, whether by way of grant or by way of loan, by any body qualified to receive an advance under this Part of this Act, shall, if the applicant is a Government Department, be referred by the Treasury to the Development Commissioners, and, if the applicant is any other body or persons, shall be sent by the Treasury to the Government Department (*m*) concerned, to be by them referred together with their report thereon to the Development Commissioners.

(2) The Commissioners shall consider and report to the Treasury on every application so referred to them, and may for that purpose, if necessary, hold inquiries either by themselves, or by any of their officers, or any other person appointed for the purpose.

(3) The Commissioners may also appoint advisory committees, and may submit to any such advisory committee for their advice any application referred to them.

(4) The Commissioners may also frame schemes with respect to any of the matters for which advances may be made under this Part of this Act with a view to their adoption by a Government Department or other body or persons to whom an advance may be made.

(5) Before making any recommendation for an advance for the purpose

(*k*) Now "eight," see Development and Road Improvement Funds Act, 1910, s. 1. By the same section, "four" now constitute a quorum, and the provisions as to retirement are varied.

(*l*) As to pensions of Development Commissioners, members of the Road Board, and their officers, see s. 2 of the Act of 1910.

(*m*) In the case of light railways to the Light Railway Commissioners (Light Railways Act, 1912, s. 3).

of the improvement of rural transport, the Commissioners shall consult with the Road Board.

(6) The Commissioners shall make to the Treasury an annual report of their proceedings, and such report shall be laid annually before Parliament by the Treasury.

Power to acquire land for certain purposes.

5.—(1) Where an advance is made under this Part of this Act for any purpose which involves the acquisition of land, the Department, body, or persons to whom the advance is made, may acquire and hold land for the purpose, and, where they are unable to acquire by agreement on reasonable terms any land which they consider necessary, they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily in accordance with the provisions of the Schedule to this Act, and the Commissioners shall have power to make such order.

(2) No land shall be authorised by an order under this section to be acquired compulsorily which, at the date of the order, forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity or convenience of any dwelling-house, or which at that date is the property of any local authority, or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archæological interest.

(3) The Commissioners, in making an order for the compulsory purchase of land, shall have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose where part only of a holding is taken shall take into consideration the size and character of the existing agricultural buildings not proposed to be taken which are used in connection with the holding and the quantity and nature of the land available for occupation therewith, and shall also so far as practicable avoid displacing any considerable number of agricultural labourers or others employed on or about the land.

Definition of agriculture and rural industries.

6. For the purposes of this Part of this Act the expression "agriculture and rural industries" includes agriculture, horticulture, dairying, the breeding of horses, cattle, and other live stock and poultry, the cultivation of bees, home and cottage industries, the cultivation and preparation of flax, the cultivation and manufacture of tobacco, and any industries immediately connected with and subservient to any of the said matters.

PART II.

Road Improvement.

Constitution of Road Board.

7.—(1) For the purposes of improving the facilities for road traffic in the United Kingdom and of the administration of the road improvement grant (*n*) provided under any Act passed in the present or any future session of Parliament, there shall be constituted in accordance with regulations (*o*) made by the Treasury a board, to be called the Road Board, consisting of such number of persons appointed by the Treasury as the Treasury may determine.

(2) The Road Board shall be a body corporate with a common seal, with power to hold land without licence in mortmain.

(*n*) As to this grant, see s. 12, *post*, and note thereto.

(*o*) By Regulations dated May 13th, 1910, the Treasury constituted the Road Board of five members.

(3) The Road Board may pay the chairman or vice-chairman of the Board such salary as the Board, with the consent of the Treasury, may determine.

(4) The Road Board may appoint such officers and servants for the purposes of their powers and duties under this Part of this Act as the Board may, with the sanction of the Treasury, determine, and there shall be paid to such officers and servants out of the road improvement grant such salaries or remuneration (*p*) as the Treasury may determine.

Powers of Road Board.

8.—(1) The Road Board shall have power (*q*), with the approval of the Treasury—

(a) to make advances to county councils and other highway authorities in respect of the construction of new roads or the improvement of existing roads;

(b) to construct and maintain any new roads;

which appear to the Board to be required for facilitating road traffic.

(2) Where advances have been made to highway authorities in respect of the construction of new roads, the Road Board may, where they think it desirable, also contribute towards the cost of maintenance of such new roads.

(3) The sums expended by the Road Board out of income on the construction of new roads or the acquisition of land, or in respect of any loan raised for any such purpose, shall not in any year exceed one-third of the estimated receipts of the Road Board for that year.

(4) An advance to a highway authority may be either by way of grant or by way of loan, or partly in one way and partly in the other, and shall be upon such terms and subject to such conditions as the Board think fit.

(5) For the purposes of this Part of this Act the expression "improvement of roads" includes the widening of any road, the cutting off the corners of any road where land is required to be purchased for that purpose, the levelling of roads, the treatment of a road for mitigating the nuisance of dust, and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair; and the expression "roads" includes bridges, viaducts, and subways.

Provisions as to roads constructed by Road Board.

9.—(1) Every road constructed by the Road Board under the provisions of this Part of this Act shall be a public highway, and the enactments relating to highways and bridges shall apply to such roads accordingly, except that every such road shall be maintainable by and at the cost of the Road Board, and, for the purpose of the maintenance, repair, improvement, and enlargement of or dealing with any such road, the Board shall have the same powers (except the power of levying a rate) and be subject to the same duties as a county council have and are subject to as respects main roads, and may further exercise any powers vested in a county council for the purposes of the maintenance and repair of bridges, and the Road Board shall have the same powers as a county council for the preventing and removing of obstructions:

Provided that—

(a) Communications between a road or path and a road constructed by the Road Board shall be made in manner to be approved by the Road Board; and

(b) The Road Board and any highway authority in whose district any part of any such road is situate may contract for the undertaking by such authority of the maintenance and repair of the part of

(*p*) As to pensions, see note (*l*), *ante*, p. 2124.

(*q*) The Road Board have issued a Circular (July, 1910) as to applications for advances under Part II. of the Act. The Board have also issued (April, 1911) directions and specifications for the tar-treatment of roads.

such road in their district; and, for the purposes of such undertaking, the highway authority shall have the same powers and be subject to the same duties and liabilities as if the road were a road vested in the highway authority.

(2) Before the Treasury approve of the construction of a new road by the Road Board, they shall consult with the Local Government Board and shall satisfy themselves that notice of the intention to construct the road has been sent by the Road Board to every highway authority in the area of which any part of the proposed road will be situate, and shall consider any objections to the proposed road which they may receive from any such authority.

Provisions as to construction of new roads by highway authorities.

10.—(1) Where the Road Board make an advance to a highway authority in respect of the construction of a new road, the Board may authorise the authority to construct the road, and where so authorised the highway authority shall have power to construct the road and to do all such acts as may be necessary for the purpose, and any expenses of the authority, so far as not defrayed out of the advance, shall be defrayed as expenses incurred by the authority in exercise of their powers as highway authority, and the enactments relating to such expenses, including the provisions as to borrowing, shall apply accordingly.

(2) Where the highway authority to whom the advance is made are a county council, the new road, when constructed, shall be a main road and in any other case shall be a highway repairable by the inhabitants at large:

Provided that the maintenance of any such road within the administrative county of London shall devolve upon the local authority responsible for the maintenance of streets and roads in whose district the same is situate.

Acquisition of land.

11.—(1) Where the Treasury have approved a proposal by the Road Board to construct a new road under this Part of this Act, the Board may acquire land for the purpose, and may, in addition, acquire land on either side of the proposed road within two hundred and twenty yards from the middle of the proposed road.

(2) The Road Board may acquire, erect, and furnish such offices and other buildings as they may require, and may acquire land for the purpose.

(3) Where a highway authority are authorised to construct a new road under this Part of this Act, or an advance is made to such an authority in respect of the improvement of an existing road, an authority may acquire land for the purpose of such construction or improvement.

(4) For the purpose of the purchase of land by agreement under this Part of this Act by the Road Board or a highway authority the Lands Clauses Acts shall be incorporated with this Part of this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight (*r*) of the Public Health Act, 1875, shall apply as if the Road Board and the highway authority were referred to therein.

(5) Where the Road Board or any highway authority are unable to acquire by agreement on reasonable terms any land which they consider necessary, they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily in accordance with the provisions of the Schedule to this Act, and the Commissioners shall have power to make such an order: Provided that the provisions of Part I. of this Act prohibiting the compulsory acquisition of the classes of land mentioned in subsection (2) (*s*)

(*r*) See s. 178 (as to Duchy of Lancaster lands), *ante*, p. 423.

(*s*) In the Act as originally printed, "sub-section (3)" appeared by a clerical error for "sub-section (2)"; see the amending Act of 1910, s. 1.

of section five of this Act shall apply to the acquisition by the Road Board of land on either side of a road proposed to be constructed by the Board.

(6) The Road Board shall have full power, with the approval of the Treasury, to sell, lease, and manage any land acquired by them under this Part of this Act and not required for the new road, and any receipts derived from any such land, so far as they are applied for the purposes of the construction of new roads, shall not be treated as part of the expenditure of the Road Board on new roads for the purpose of the provisions of this Act limiting the amount of expenditure of the Road Board on new roads.

Expenses and receipts of Road Board.

12.—(1) All expenses of the Road Board under this Part of this Act, including the salary of the chairman or vice-chairman and the salaries and the remuneration of officers and servants, to such amount as may be sanctioned by the Treasury, shall be defrayed out of the road improvement grant (*t*).

(2) The Treasury shall cause an account to be prepared and transmitted to the Comptroller and Auditor-General for examination, showing the receipts into and issues out of the road improvement grant in the financial year ending the thirty-first day of March preceding, and the Comptroller and Auditor-General shall certify and report upon the same, and such account and report shall be laid before Parliament by the Treasury.

(3) Any sums received by the Road Board under this Part of this Act shall, subject to regulations made by the Treasury, be carried to the account to which the road improvement grant is required to be carried under the Act under which the grant is provided, and shall be treated as part of that grant.

Power to borrow.

13.—(1) The Road Board may, with the approval of and subject to regulations made by the Treasury, borrow on the security of the road improvement grant for the purpose of meeting any expenditure which appears to the Treasury to be of such a nature that it ought to be spread over a term of years, so however that the total amount required for the payment of interest on and the repayment of money so borrowed shall not exceed in any year the sum of two hundred thousand pounds.

(2) If and so far as the road improvement grant is insufficient to meet the amount required for the payment of interest on and the repayment of principal in any year, that amount shall be charged on and payable out of the Consolidated Fund or the growing produce thereof, but any sums so paid out of the Consolidated Fund shall be made good out of the road improvement grant.

Annual report to Parliament.

14. The Road Board shall make to the Treasury an annual report of their proceedings, and such report shall be laid annually before Parliament by the Treasury.

Application to London.

15. For the purposes of this Part of this Act the expression "highway authority" includes, as respects the administrative county of London, the London County Council.

16. [*Application to Scotland.*]

17. [*Application to Ireland.*]

(*t*) By s. 90 of the Finance (1909–10) Act, 1910, *post*, as amended by s. 18 of the Revenue Act, 1911, the Road Improvement Account is to be credited with the "net proceeds" of the duties on motor spirits and on carriage licences. The Treasury Regulations under this section are dated June 8th, 1910.

PART III.

General.

18. In approving, executing, or making advances in respect of the execution of any work under this Act involving the employment of labour on a considerable scale, regard shall be had so far as is reasonably practicable to the general state and prospects of employment.

Obligation to consider the state and prospects of employment.

19.—(1) Where an order made by the Development Commissioners under Part I. or Part II. of this Act authorises the acquisition of any land forming part of any common, open space, or allotment, the order, so far as it relates to the acquisition of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the order provides for giving in exchange for such land other land, not being less in area, certified by the Board of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights, and to the public :

Provisions as to commons and open spaces.

Provided that—

(a) This provision shall not apply to the acquisition of any common land for the purpose of forestry, if the order provides for the granting to the public of reasonable access to the land for air, exercise, or recreation unless the land has been dedicated to the public use and enjoyment or is a metropolitan common within the terms of the Metropolitan Commons Act, 1866, or is a suburban common as defined by the Commons Act, 1876, or is subject to a scheme of regulation made in pursuance of the Metropolitan Commons Acts, 1866 to 1898, or the Inclosure Acts, 1845 to 1899, or to a private or local Act of Parliament ; and

(b) This provision shall not apply to the acquisition of any common land for the purpose of the construction of a new road or the improvement of an existing road within a rural district ; and

(c) Nothing in this Act shall authorise the acquisition of land on either side of a new road to be constructed by the Road Board where the land forms part of a common, open space, or allotment.

(2) Before giving any such certificate of equality of exchange, the Board of Agriculture and Fisheries shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any order of the Development Commissioners authorises such an exchange, the order shall provide for vesting the land given in exchange in the persons in whom the common, open space, or allotment was vested, subject to the same rights, trusts, and incidents as attached to the common, open space, or allotment, and for discharging the part of the common, open space, or allotment acquired from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green ; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation and any disused burial ground ; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

20. This Act may be cited as the Development and Road Improvement Funds Act, 1909.

Short title.

SCHEDULE.

SECTIONS 5 AND 11.

(1) Where a Government Department, body, or persons to whom an advance is made under Part I. of this Act, or the Road Board or a highway authority (in this Schedule referred to as "the undertakers") propose to purchase land compulsorily under this Act, the undertakers may submit to the Development Commissioners a draft order putting in force, as respects the lands specified in the order, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) The order shall be in the prescribed form and shall contain such provisions as the Development Commissioners may prescribe for the purpose of carrying the order into effect, and shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, or, in Scotland, sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845, and those Acts shall apply accordingly, subject to the following modifications:—

(a) Any question of disputed compensation shall be determined by a single arbitrator, who shall be appointed, and whose remuneration shall be fixed, as respects England, by the Lord Chief Justice of England, as respects Scotland by the Lord President of the Court of Session, and as respects Ireland by the Lord Chief Justice of Ireland and the arbitrator so appointed shall be deemed to be an arbitrator within the meaning of those Acts;

(b) An arbitrator so appointed may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow, as costs of the arbitration, the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers have been caused or incurred unnecessarily;

(c) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory, and the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed work or road for which the land is authorised to be acquired by the undertakers;

(d) The provisions of the Lands Clauses Acts as to the sale of superfluous land shall not apply.

(3) The draft order shall be published by the undertakers in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land as may be prescribed, and in the case of land forming part of a common, open space, or allotment, also to the Board of Agriculture and Fisheries.

(4) An order authorising the acquisition of any buildings may, if a portion only of those buildings are required for the purposes of the undertakers, notwithstanding anything in the Lands Clauses Acts, require the owners of and other persons interested in those buildings to sell and convey to the undertakers the portions only of the buildings so required, if the arbitrator is of opinion that such portions can be severed from the remainder of the properties without material detriment thereto, and, in such case, the undertakers shall not be obliged to purchase the whole or any greater portion thereof, and shall pay for the portions acquired by them and make compensation for any damage sustained by the owners thereof or other parties interested therein by severance or otherwise.

(5) An order may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired.

(6) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid

to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

The provisions of this paragraph shall not apply to Scotland or Ireland.

(7) In construing, for the purposes of this Schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act and the undertakers shall be deemed to be the promoters of the undertaking, and the expression "land" shall include easements, in or relating to land.

(8) In this Schedule the expression "prescribed" means prescribed by the Development Commissioners, and in Scotland the expression "easements" means servitudes.

THE FINANCE (1909-10) ACT, 1910.

(10 Edw. 7, c. 8.)

PART I.

Duties on Land Values.

* * * * *

SUPPLEMENTAL.

35.—(1) No duty under this Part of this Act (*u*) shall be charged in respect of any land or interest in land held by or on behalf of a rating authority, or any statutory combination representative of two or more local or rating authorities, and any increment value duty in respect of any such land which would have been collected from the authority (whether on the occasion of the transfer on sale of the land, or any interest in the land, or the grant of a lease of the land, or on the periodical occasions provided in this Act) shall, for the purposes of the provisions of this Act as to the collection of increment value duty, be deemed to have been paid.

Exemption for land held by rating authorities.

(2) For the purposes of this section the expression "rating authority" means any body who have power to raise a rate or administer money raised by a rate; and the expression "rate" means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument, requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

* * * * *

PART VI.

Customs and Excise other than Liquor Licence Duties.

* * * * *

85.—(1) Any person using motor spirit for purposes other than supplying motive power for motor cars shall be entitled, in accordance with the provisions of this section, to an allowance or repayment of the duty paid in respect of the motor spirit (*x*) under this Act, and any person using motor spirit for any of the purposes mentioned in Part I. of the Fifth Schedule to this Act shall be entitled, in accordance with the provisions of this section, to an

Exemptions and allowances in respect of the duty on motor spirit.

(*u*) The duties under Part I. are the "Duties on Land Values," viz., Increment Value Duty (ss. 1—12), Reversion Duty (ss. 13—15), Undeveloped Land Duty (ss. 16—19), and Mineral Rights Duty (ss. 20—24).

(*x*) The duty on motor spirit is imposed by s. 84. As to a local authority's motor fire engine or fire brigade motor cars, see s. 12 of the Finance Act, 1911, *post*.

allowance or repayment of half the amount of the duty paid under this Act in respect of the spirit:

Provided that a person using motor spirit before the first day of January nineteen hundred and ten for any of the purposes mentioned in Part I. of the Fifth Schedule to this Act, shall be entitled, in accordance with the provisions of this section, to an allowance or repayment of the whole amount of any duty paid under this Act in respect of the spirit so used.

(2) Motor spirit may be delivered without payment of duty or on the payment of half the amount of the full duty payable. in such cases as the Commissioners may approve, and subject to such conditions as to proof, security, and otherwise, as the Commissioners may impose for the purpose of protecting the revenue.

(3) If any person proves to the satisfaction of the Commissioners that he has within the previous six months used any quantity exceeding five gallons of spirit which is motor spirit within the meaning of this Act for purposes other than supplying motive power for motor cars, or in other circumstances entitling him to the repayment of the full amount of duty in respect of the spirit, he shall be entitled to obtain from the Commissioners a repayment of any duty which has been paid in respect of the spirit, and if any person proves to the satisfaction of the Commissioners that he has within the previous six months used any quantity exceeding five gallons of motor spirit for the purposes mentioned in Part I. of the Fifth Schedule to this Act, and that the full duty has been paid upon the spirit so used, he shall be entitled to obtain from the Commissioners a repayment of half the amount of duty so paid.

Duty on licences for motor cars.

86.—(1) The Excise duty for carriages payable in respect of any motor car which is a carriage within the meaning of section four of the Customs and Inland Revenue Act, 1888, shall, as from the first day of January nineteen hundred and ten, be at the rates specified in Part II. of the Fifth Schedule to this Act, and the duty so payable shall be charged throughout the United Kingdom, and the Acts relating to the payment of the duty shall extend accordingly.

(2) The unit of horse-power for the purpose of any rate of duty in the said Schedule shall be calculated in accordance with regulations (*y*) made by the Treasury for the purpose, and section twenty-seven of the Revenue Act, 1869 (which relates to the prosecution of offences), shall, so far as relates to motor cars charged with duty under this section, be construed as if the horse-power of the car were substituted for the weight of the carriage.

(3) Nothing in this section shall be construed so as to increase or affect the duty now payable in respect of any motor cab, motor omnibus or other vehicle, being a hackney carriage within the meaning of section four of the Customs and Inland Revenue Act, 1888, or to require a licence to be taken out for any motor car which is not a carriage within the meaning of that section.

(4) If a duly qualified medical practitioner proves to the satisfaction of the Commissioners or council by whom the licence is granted that any motor car kept by him is kept for the purpose of his profession, he shall be entitled to an allowance in respect of the duty payable under this section on the licence for the car equal to half the amount of duty so payable.

(5) If an officer of the Army Motor Reserve produces to the Commissioners or council by whom the licence is granted a certificate, granted in such manner and by such persons as the Army Council direct, that any motor car kept by him has been used for the purposes of the Army Motor Reserve under regula-

(*y*) See Regulations dated Nov. 22, 1912; and see also *London C. C.* v. *Turner* (1911), 75 J. P. 551.

tions made by the Army Council for at least six days in any year, he shall be entitled to an allowance in respect of the duty payable under this section on the car bearing the same proportion to the whole amount of duty as the number of days for which the car has been so used bears to a full year.

(6) No duty shall be payable under this section in respect of any motor fire engine or ambulance (*z*).

(7) The Treasury may make regulations providing for the total or partial exemption, for a limited period, from the duty payable under this section of any motor cars brought into the United Kingdom by persons making only a temporary stay in the United Kingdom.

(8) [*Temporary.*]

(9) The expression " motor car " in this Part of this Act means any vehicle which is for the time being a light locomotive within the meaning of the Locomotives on Highways Act, 1896, as amended by any other Act, and includes a motor bicycle and a motor tricycle, but does not include a vehicle drawn by a motor car.

PART VII.

Provisions as to Payments to Local Authorities and to Road Improvement Account.

87.—(1) All payments made in pursuance of conditions attached by licensing justices to the grant of new licences under section four of the Licensing Act, 1904 (*a*), shall, notwithstanding anything in that or any other Act, be paid into the Exchequer. Payments in respect of monopoly value to go to Exchequer.

88.—(1) For the purpose of subsection (3) of section seventeen of the Finance Act, 1907 (*b*) (which makes provision with respect to the method of calculating proceeds of duties in the event of any alteration of the rate of duties), the proceeds of the duties on the licences for the sale of intoxicating liquor *and on licences for motor cars* imposed by this Act shall, so far as respects the sums to be paid into any local taxation account out of the Consolidated Fund in respect thereof, be deemed notwithstanding anything in that subsection to be the amount of the proceeds of the duties on those licences during the year ending the thirty-first day of March nineteen hundred and nine. Payments into local taxation account in respect of liquor licences and provisions as to duties on motor car licences.

(2) Notwithstanding the proviso to subsection (4) of section six of the Finance Act, 1908 (*c*), the duties on licences for motor cars in England and Wales shall continue to be duties to which that section applies, but any sum by which the proceeds of those duties levied in any financial year by the council of any county or county borough exceed the amount of the proceeds of those duties certified by the Local Government Board to have been collected in that county or county borough during the year ending the thirty-first day of March nineteen hundred and nine shall be paid into the Exchequer, and a council shall be entitled to be paid any sum by which the proceeds of those duties levied by them in any year are less than that amount, and the

(*z*) A motor car used by a local authority for fire brigade purposes is now within this exemption ; see Finance Act, 1911, s. 11, *post*.

(*a*) See also s. 14 (3) of the Licensing (Consolidation) Act, 1910, and *cf.* note (*b*) on p. 754, *ante*.

(*b*) See this section, *ante*, p. 2070. The portion of the "liquor licence" duties payable to the local taxation account is thus stereotyped. The words and "on licences for motor cars" were repealed by the Revenue Act, 1911, *post*. As to such duties, see next subsection.

(*c*) See this sub-section, *ante*, p. 2085. By virtue of s. 18 (1) of the Revenue Act, 1911, *post*, the present sub-section now applies to the duties on all carriage licences (including motor cars), and stereotypes the portion thereof applicable to local purposes.

sums so to be paid shall be charged on and paid out of the Consolidated Fund or the growing produce thereof.

(3) *Any reference in this section to duties on licences for motor cars or to the proceeds of those duties shall be construed to be a reference only to the duties on the licences which are affected by this Act* (*d*).

Payment of duties on motor spirit and motor car licences to road improvement account.

90.—(1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum (in this Act referred to as the road improvement grant) (*e*) equal to the net proceeds of the duties on motor spirit and the net proceeds of the duties on licences for motor cars which are affected by this Act.

(2) The road improvement grant shall be carried to a separate account to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury with respect to accounts and accumulations of moneys standing to the account, be administered and applied in manner provided by the Development and Road Improvement Funds Act, 1909.

(3) The expression " the net proceeds of the duties " means the amount of those duties paid into the Exchequer, after deducting such sums as are certified by the Commissioners to be the cost of collecting the duties, and after deducting in the case of duties payable on licences for motor cars any sum which is payable to any local taxation account in respect of the proceeds of those duties, or to any council in respect of any deficiency in the proceeds of those duties.

Payment of half the proceeds of the duties on land values for benefit of local authorities.

91 (*f*).—(1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum equal to one-half of the net proceeds of the duties on land values under Part I. of this Act (including mineral rights duties).

(2) The sums so charged shall be carried to a separate account, to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury in respect of accounts, audit, and accumulation of moneys standing to the account, be appropriated for the benefit of local authorities in the United Kingdom in such manner as Parliament may hereafter determine.

FIFTH SCHEDULE.

PART I.

REBATE OF MOTOR SPIRIT DUTY.

Motor spirit used for the purpose of supplying motive power—

(1) To a motor car which is constructed or adapted for use, and is used, solely for the conveyance of any goods or burden in the course of trade or husbandry, and whereon the Christian name and surname and place of abode or place of business of the person, or the name or style and principal or only place of business of the company or firm keeping the same, shall be legibly and visibly painted in letters of not less than one inch in length.

(2) To a motor cab, motor omnibus, or other vehicle being a hackney carriage within the meaning of section four of the Customs and Inland Revenue Act, 1888, while it is standing or plying for hire.

(*d*) Repealed by the Revenue Act, 1911, *post*.

(*e*) See the Development and Road Improvement Funds Act, 1909, *ante*, p. 2125. By s. 18 (3) of the Revenue Act, 1911, *post*, the provisions of this section were extended to the duties on carriage licences generally.

(*f*) The operation of this section is suspended until Parliament otherwise determines, but not beyond March 31st, 1914, see Revenue Act, 1911, s. 16, *post*. That Act repealed it, but such repeal was annulled by s. 21 of the Finance Act, 1911, *post*.

(3) To a motor car which is constructed or adapted for use or is used partly for the conveyance of any goods or burden in the course of trade or husbandry, and partly as a motor cab, motor omnibus, or other vehicle being a hackney carriage within the meaning of section four of the Customs and Inland Revenue Act, 1888, standing or plying for hire.

(4) To a motor car kept by a duly qualified medical practitioner while it is being used by him for the purposes of his profession.

Part II.

Rates of Duties on Motor Cars.

	£	s.	d.
Motor bicycles and motor tricycles, of whatever horse-power	1	0	0
Motor cars— Not exceeding 6½ horse-power	2	2	0
Motor cars— Exceeding 6½, but not exceeding 12 horse-power	3	3	0
,, 12 ,, ,, 16 ,,	4	4	0
,, 16 ,, ,, 26 ,,	6	6	0
,, 26 ,, ,, 33 ,,	8	8	0
,, 33 ,, ,, 40 ,,	10	10	0
,, 40 ,, ,, 60 ,,	21	0	0
,, 60	42	0	0

THE REVENUE ACT, 1911.

(1 Geo. 5, c. 2.)

PART V.

Provisions as to Payments for Local Authorities.

16. Section ninety-one (*g*) of the principal Act (which provides for the payment of half the proceeds of the duties on land values for the benefit of local authorities) shall be suspended in its operation as from the date of the principal Act until Parliament shall otherwise determine, but not beyond the thirty-first day of March nineteen hundred and fourteen. Repeal of s. 91 of 10 Edw. 7, c. 5.

17.—(1) The sum to be paid in respect of the local taxation (Customs and Excise) duties into the Local Taxation Account, and the Local Taxation (Scotland) Account, and the Local Taxation (Ireland) Account respectively, under subsection (2) of section seventeen (*h*) of the Finance Act, 1907, shall, in the current and every subsequent financial year until Parliament otherwise determines, instead of being a sum equal to the amount which would have been paid as the proceeds of those duties if that Act had not passed, be a sum equal to the amount of the English, Scottish, and Irish shares respectively of the proceeds of those duties during the financial year ending the thirty-first day of March nineteen hundred and nine. Payment to Local Taxation Account of fixed sum in respect of the local taxation (Customs and Excise) duties. 7 Edw. 7, c. 13.

(2) [*Temporary.*]

18.—(1) So much of subsection (2) of section eighty-eight (*i*) of the principal Act as provides for the payment of a part of the proceeds of the duties on Extension of s. 88 of 10 Edw. 7, c. 8, to all carriage licences.

(*g*) See this section, *ante*, p. 2134.
(*h*) See this section, *ante*, p. 2071.
(*i*) See this sub-section, *ante*, p. 2133.

licences for motor cars in England and Wales into the Exchequer, and for the payment out of the Consolidated Fund to the council of a county or county borough of any deficiency in the proceeds of those duties, shall extend to the proceeds of the duties on all carriage licences (whether licences for motor cars or not), and that provision shall be construed accordingly.

(2) [*Scotland.*]

(3) Section ninety (*k*) of the principal Act (which relates to the payment out of the Consolidated Fund of a sum equal to the net proceeds of the duties on motor spirit and motor car licences as the road improvement grant) shall be construed as if a reference to the duties on carriage licences were substituted in that section for the reference sto the duties on licences for motor cars which were affected by that Act and to the duties payable on licences for motor cars.

(4) In this section, the expression " duties on carriage licences " means the duties on all licences for carriages, including any duty charged under subsection (1) of section eight of the Locomotives on Highways Act, 1896, and any duty charged under section eighty-six of the principal Act in respect of motor cars.

59 & 60 Vict. c. 36.

PART VII.

MISCELLANEOUS.

Repeal, construction, and short title.

20.—(1) The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
10 Edw. 7, c. 8.	Finance (1909-10) Act, 1910.	Section fourteen, subsection (3); section forty-four, subsection (1); the words "and on licences for motor cars" in subsection (1) of section eighty-eight; subsection (3) of section eighty-eight; and section ninety-one (*l*).

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1911.

(1 & 2 GEO. 5, C. 7.)

An Act to amend the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*m*). [18th August, 1911.]

Certain false statements concerning a candidate to be an illegal practice.

1.—(1) Any person who, or the directors of any body or association corporate which, before or during any municipal election, shall, for the purpose of affecting the return of any candidate at such election, make or publish any

(*k*) See this section, *ante*, p. 2134.

(*l*) The repeal of s. 91 was annulled by the Finance Act, 1911, s. 16, *post*.

(*m*) It appears to be doubtful whether this Act will apply to elections of urban and rural district councillors conducted under the L. G. A., 1894, s. 48, and the rules made thereunder.

false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of an illegal practice within the meaning of the provisions of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*n*), and shall be subject to all the penalties for and consequences of committing an illegal practice in the said Act mentioned, and the said Act shall be taken to be amended as if the illegal practice defined by this Act had been contained therein. Injunction against person making false statement. 47 & 48 Vict. c. 70.

(2) No person shall be deemed to be guilty of such illegal practice if he can show that he had reasonable grounds for believing, and did believe, the statement made by him to be true.

(3) Any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and, for the purpose of granting an interim injunction, prima facie proof of the falsity of the statement shall be sufficient.

(4) A candidate (*o*) shall not be liable nor shall be subject to any incapacity, nor shall his election be avoided, for any illegal practice under this Act committed by his agent, unless it can be shown that the candidate has authorised or consented to the committing of such illegal practice, or is paid for the circulation of the false statement constituting the illegal practice, or unless upon the hearing of an election petition the election court shall find and report that the election of such candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

2. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1911, and shall be construed as one with the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and that Act and this Act may be cited together as the Municipal Elections (Corrupt and Illegal Practices) Acts, 1884 and 1911. Short title and construction.

THE PUBLIC WORKS LOANS ACT, 1911.

(1 & 2 GEO. 5, c. 17.)

4. In section eleven (*p*) of the Public Works Loans Act, 1875, as amended by section five of the Public Works Loans Act, 1898, fifty years shall be substituted for thirty years as the maximum period for the repayment of a loan in a case where no period for repayment is specified by the special Act relating to the loan. Amendment of s. 11 of 38 & 39 Vict. c. 89, as to term for repayment of loans. 61 & 62 Vict. c. 4.

5. This Act may be cited as the Public Works Loans Act, 1911. Short title.

(*n*) See this Act, *ante*, p. 1764; see s. 7 thereof for the punishment on conviction for an illegal practice.

(*o*) As to the liability of a candidate, see ss. 8, 19, of the principal Act, *ante*, pp. 1767, 1771.

(*p*) See this section, *ante*, p. 1611. The period had already been extended from twenty years, as originally enacted, to thirty years by s. 5 of the Public Works Loans Act, 1898, which is now omitted from this volume as spent.

THE FINANCE ACT, 1911.

(1 & 2 Geo. 5, c. 48.)

Exemption of motor cars used for fire brigade purposes from duty on licences for motor cars.

11. Subsection (6) of section eighty-six (*q*) of the Finance (1909-10) Act, 1910, shall be construed as if the words " or any motor car used by any local authority for fire brigade purposes " were added at the end thereof.

Exemption for motor fire engines, &c., in respect of the duty on motor spirit.

12. Any local authority using motor spirit for the purpose of supplying motive power to any motor fire engine provided by them, or to any motor car kept by them while it is being used by them for the purposes of their fire brigade service, shall be entitled to an allowance or repayment of the duty paid in respect of the motor spirit in the same manner as persons using motor spirit for purposes other than the supply of motive power for motor cars (*r*).

PART IV.

National Debt.

Partial application of surplus for development fund and sanatoria.

38 & 39 Vict. c. 45.

16.—(1) The old sinking fund for the financial year ending the thirty-first day of March nineteen hundred and eleven, as calculated under section nineteen of the Revenue Act, 1911, shall, notwithstanding anything in the Sinking Fund Act, 1875—

9 Edw. 7, c. 47.

(*a*) to the extent of one million five hundred thousand pounds, be issued and paid by the Treasury at such times as they direct to the development fund under the Development and Road Improvement Funds Act, 1909 (*s*), in lieu of the sums to be issued out of the consolidated fund under subsection (2) of section two of that Act in the years ending the thirty-first day of March nineteen hundred and thirteen, nineteen hundred and fourteen, and nineteen hundred and fifteen respectively; and

(b) to the extent of one million five hundred thousand pounds, be issued by the Treasury at such times as they direct, and carried by the Treasury to a separate account, and made available in such manner as Parliament may determine for the purposes of the provision of, or making grants in aid to, sanatoria and other institutions (*t*) for the treatment of tuberculosis, or such other diseases as the Local Government Board, or as respects Scotland the Local Government Board for Scotland, or as respects Ireland the Local Government Board for Ireland, with the approval of the Treasury, may appoint; and

Amendment of schedule to Revenue Act, 1911. 1 Geo. 5, c. 2.

21. The Revenue Act, 1911, shall be read as if section ninety-one of the Finance (1909-10) Act, 1910, were not included in the schedule of enactments repealed (*u*).

Repeal, construction, and short title.

22.—(1) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(*q*) See this sub-section, *ante*, p. 2133.
(*r*) See s. 85 of the Finance (1909-10) Act, 1910, *ante*, p. 2131.
(*s*) See this Act, *ante*, p. 2122.
(*t*) See the National Insurance Act, 1911, s. 64, *post*, p. 2146.
(*u*) But s. 91, though not repealed, is at present suspended, see note thereto, *ante*, p. 2134

SCHEDULE.

Section 22.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
9 Edw. 7, c. 47.	The Development and Road Improvement Funds Act, 1909.	Subsection (2) of section two, as from the thirty-first day of March nineteen hundred and twelve (*x*).

COAL MINES ACT, 1911 (*y*).

(1 & 2 Geo. 5, c. 50.)

An Act to consolidate and amend the Law relating to Coal Mines and certain other mines. [16th December 1911.]

Application of Act.

1. The mines to which this Act applies (*z*) are mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay; and in this Act the expression "mine," unless the context otherwise requires, means a mine to which this Act applies. Application of Act.

26.—(1) Where any mine (*a*) is abandoned or the working thereof discontinued (*b*), at whatever time the abandonment or discontinuance occurred, it shall be the duty of the owner (*a*) thereof, and of every other person interested in the minerals of the mine, to cause the top or entrance of every (*c*) shaft and outlet to be kept surrounded by a structure of a permanent character sufficient to prevent accidents: Fencing in case of abandoned mine.

Provided that—

(i.) Subject to any contract to the contrary, the owner of the mine shall, as between himself and any other person interested in the minerals of the mine, be liable to carry this section into effect, and to pay any costs, charges and expenses incurred by any other person interested in the minerals of the mine in carrying this section into effect:

(ii.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

(2) No person shall be precluded by any agreement or otherwise from doing, or be liable to any injunction, damages, penalty, or forfeiture in respect of, such acts as may be necessary in order to comply with the provisions of this section.

(*x*) See note to this section, *ante*, p. 2123.

(*y*) This Act repealed the provisions of the Coal Mines Regulation Act, 1887, as to the matters dealt with in the text.

(*z*) Shafts of abandoned mines of a kind to which this Act does not apply are dealt with by the Metalliferous Mines Regulation Act, 1872, *ante*, p. 1565; and reference should be made to the cases cited in the notes thereto.

(*a*) See definitions in s. 122, *post*.

(*b*) Where a shaft is abandoned or working thereof discontinued, notice must be given to the Inspector of Mines (s. 19). Section 37 deals with the fencing of shafts not abandoned or permanently out of use.

(*c*) This provision applies to all shafts and outlets and is no longer restricted as under the repealed Act to such as are within fifty yards of a highway, road, footpath, or place of public resort, or are in open or uninclosed land.

(3) Any shaft or outlet which is not kept surrounded by a structure as required by this section shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875 (*d*).

38 & 39 Vict. c. 55.

PART III.

PROVISIONS AS TO HEALTH.

Provisions as to sanitary conveniences.

76. General regulations shall be made under this Act with respect to the provision and use of sanitary conveniences in mines, both above and below ground (*e*).

Interpretation.

122. In this Act, unless the context otherwise requires,—

"Mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine, but does not include any part of such premises on which any manufacturing process is carried on other than a process ancillary to the getting, dressing or preparation for sale of minerals :

"Owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and in the case of a mine the business whereof is carried on by a liquidator or receiver includes such liquidator or receiver, but does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine ; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability :

THE RAG FLOCK ACT, 1911.

(1 & 2 GEO. 5, c. 52.)

An Act to prohibit the sale and use for the purpose of the manufacture of certain articles of unclean Flock manufactured from Rags.

[16th December, 1911.]

Prohibition of sale and use for the purpose of manufacture of certain

1.—(1) It shall not be lawful for any person to sell or have in his possession for sale flock manufactured from rags (*f*) or to use for the purpose of making (*g*) any article of upholstery, cushions, or bedding flock manufactured from rags

(*d*) For the effect of this provision see note (*t*) to the Quarry Fencing Act, 1887, *ante*, p. 1792. There appears to be no longer any penalty for mere neglect to fence before service of a "nuisance" notice.

(*e*) As to this section, see note to s. 38 of the P. H. A., 1875, *ante*, p. 100. The general regulations referred to are made by the Home Secretary (s. 76).

(*f*) Flock consisting of jute refuse, composed partly of waste fluff from the machines, and partly of cuttings from woven jute fabric trimmed away in manufacture, was held to be within the Act (*Cooper* v. *Swift*, [1914] 1 K. B. 253 ; 78 J. P. 57).

(*g*) The restuffing of a mattress with flock—the flock being taken from the same cover and put back again without any addition—is not the "making any article of bedding" within the meaning of this sub-section (*Gamble* v. *Jordan*, [1913] 3 K. B. 149 ; 77 J. P. 269).

or to have in his possession flock manufactured from rags intended to be used for any such purpose, unless the flock conforms to such standard of cleanliness as may be prescribed by regulations (*h*) to be made by the Local Government Board, and, if any person sells or uses or has in his possession flock in contravention of this Act, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence, ten pounds, or in the case of a second or subsequent offence fifty pounds. articles of unclean flock manufactured from rags.

(2) All regulations made by the Local Government Board under this Act shall be laid before Parliament as soon as may be after they are made, and the Rules Publication Act, 1893 (*i*), shall apply to such regulations as if they were statutory rules within the meaning of section one of that Act. 56 & 57 Vict. c. 66.

(3) Where, in any proceedings against a person charged with an offence under this Act, it is proved that an offence under this Act has been committed, but that person charged with the offence—

(a) purchased the flock in respect of which the offence was committed from a person resident within the United Kingdom who sold the flock under a warranty that it complied with the prescribed standard of cleanliness; and

(b) took reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty;

the person so charged shall be entitled upon an information duly laid by him to have the person who gave the warranty brought before the court, and that person may be summarily convicted of the offence, and the person originally charged shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, also be liable to pay any costs incidental to the proceedings.

(4) Where a person is charged with having flock in his possession in contravention of this Act any flock proved in the proceedings to have been found in his possession shall be deemed to be intended for sale or for use in the manufacture of such articles as aforesaid, unless the contrary is proved.

(5) It shall be the duty of a sanitary authority to enforce the provisions of this Act within their district, and for that purpose the medical officer of health, the inspector of nuisances or sanitary inspector, or any other officer whom the sanitary authority may appoint, shall have power, if so authorised (*k*) by the sanitary authority, to institute and carry on any proceedings which the sanitary authority is authorised to institute and carry on under this Act, and to enter at all reasonable times any premises in which he has reasonable cause to believe that an offence under this Act is being committed, and to examine and take samples for the purposes of analysis of any flock found therein:

Provided that, where a sample is so taken, the occupier of the premises may require the officer taking the sample to divide it into two parts and to mark, seal, and deliver to him one part.

If any person wilfully obstructs any such officer in the execution of his

(*h*) Regulations, citable as "The Rag Flock Regulations, 1912," were issued on June 8th, 1912, and provide as follows:—"Flock shall be deemed to conform to the standard of cleanliness for the purposes of sub-section (1) of section 1 of the Act when the amount of soluble chlorine, in the form of chlorides, removed by thorough washing with distilled water at a temperature not exceeding 25 degrees Centigrade from not less than 40 grammes of a well-mixed sample of flock, does not exceed 30 parts of chlorine in 100,000 parts of the flock."

(*i*) In the case of rules to which s. 1 of the Rules Publication Act, 1893, applies, notice of the intention to make rules and of the place where copies of the draft rules may be obtained must be published in the Gazette at least forty days before the rules are made, and during those forty days any public body may make representations or suggestions. There is, however, power to make provisional rules without such notice in cases of urgency.

(*k*) Presumably a general authority will suffice. It should be by resolution (*cf. Duchesne* v. *Finch* (1912), 76 J. P. 377; *Watt* v. *Hegarty* (1913), 47 Ir. L. T. 86).

powers under this section, he shall be liable on summary conviction to a fine not exceeding five pounds.

(6) The expenses of sanitary authorities under this Act shall be defrayed—

(a) in the case of the mayor, aldermen and commons of the city of London in common council assembled, out of the general rate;

(b) in the case of the council of a metropolitan borough, as part of the expenses incurred by the council in the execution of the Public Health (London) Act, 1891; *54 & 55 Vict. c. 76.*

(c) in the case of any other sanitary authority, namely the council of a municipal borough or urban or rural district, as part of the general expenses incurred in the execution of the Public Health Acts.

(7) All fines imposed in any proceedings instituted by a sanitary authority in pursuance of their powers and duties under this Act shall be paid to the sanitary authority and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed.

(8), (9) [*Application to Scotland and Ireland.*]

Short title and commencement.

2. This Act may be cited as the Rag Flock Act, 1911, and shall come into operation on the first day of July nineteen hundred and twelve.

THE NATIONAL INSURANCE ACT, 1911 (*l*).

(1 & 2 GEO. 5, c. 55.)

Administration of medical benefit.

15.—(7) If in any year the amount payable to an Insurance Committee in respect of all persons for the administration of whose medical benefit (*m*) it is responsible is insufficient to meet the estimated expenditure thereon, the Committee may, through the Insurance Commissioners, transmit to the Treasury and to the council of the county or county borough an account showing the amount so payable and the estimated expenditure, and the Treasury and the county council or the council of the county borough may, if they think fit and if satisfied that the amounts so payable and the proposed expenditure are reasonable and proper in the circumstances, sanction the expenditure.

(8) The Treasury and the council of the county or county borough sanctioning any such expenditure as aforesaid shall thereupon each be liable to make good, in the case of the Treasury out of moneys provided by Parliament, and, in the case of the council of a county or county borough, out of the county fund or borough fund or borough rate, as the case may be, one-half of any

(*l*) Considerations of space prohibit any attempt to deal with the scheme of National Insurance embodied in this Act and the amending Act of 1913. Upon questions arising as to the general administration of those Acts, *e.g.*, as to what employees of a local authority must, or need not, be insured, reference should be made to a text book upon the subject. The few sections set out on the following pages are those relating to the provision by local authorities of sanatoria, their power to contribute money for certain purposes, and their liabilities in the case of "excessive sickness" within their area.

(*m*) Medical and sanatorium benefits under the Acts are in all cases to be administered by and through the various Insurance Committees (s. 14 (1)). "Medical benefit" means medical treatment and attendance, including the provision of proper and sufficient medicines, and such medical and surgical appliances as may be prescribed by regulations; "sanatorium benefit" means treatment in sanatoria or other institutions or otherwise when suffering from tuberculosis, or such other diseases as the L. G. B. with the approval of the Treasury may appoint (s. 8 (1)): it is at present confined to tuberculosis.

sums so sanctioned by them and expended by the Insurance Committee on medical benefit in the course of the year in excess of the amounts so payable to the Insurance Committee as aforesaid (*n*).

Administration of sanatorium benefit.

16.—(1) For the purpose of administering sanatorium benefit, Insurance Committees shall make arrangements, to the satisfaction of the Insurance Commissioners,—

(a) with a view to providing treatment for insured persons (*o*) suffering from tuberculosis or any other such disease as aforesaid in sanatoria and other institutions, with persons or local authorities (other than poor law authorities) having the management of sanatoria or other institutions approved by the Local Government Board (*p*), which treatment it shall be lawful for a local authority to provide as respects insured persons resident outside as well as respects those resident within their area; and

(b) with a view to providing treatment for such persons otherwise than in sanatoria or other institutions, with persons and local authorities (other than Poor Law authorities) undertaking such treatment in a manner approved by the Local Government Board (*q*), which treatment (including the appointment of officers for the purpose) it shall be lawful for a local authority, if so authorised by the Local Government Board, to undertake.

(2) The sums available for defraying the expenses of sanatorium benefit in each year shall be—

(a) one shilling and threepence in respect of each insured person resident in the county or county borough, payable out of the funds out of which benefits are payable under this Part of this Act;

(b) one penny in respect of each such person payable out of moneys provided by Parliament:

Provided that the Insurance Commissioners may retain the whole or any part of the sums so payable out of moneys provided by Parliament to be applied, in accordance with regulations made by the Commissioners, for the purposes of research.

(3) An insured person shall not be entitled to sanatorium benefit unless the Insurance Committee recommends the case for such benefit.

(4) An Insurance Committee may, out of the sums available for defraying the expenses of sanatorium treatment, defray in whole or in part the expenses of the conveyance of an insured person to or from any sanatorium or institution to which he may be sent for treatment therein, or may make advances for the purpose.

(*n*) See s. 22, *post*, as to the power of borough and district councils to contribute towards such excess expenditure.

(*o*) Although the present section is confined to insured persons, s. 17, *post*, enables their dependants to be included.

The Finance Act, 1911, s. 16 (1) (b), *ante*, p. 2138, provided for a grant of 1½ million pounds for the purposes of the provision of, or making grants in aid to, sanatoria and other institutions for the treatment of tuberculosis, etc.

(*p*) The L. G. B. have issued a number of Circulars and Memoranda on the subject of sanatorium benefit, to which reference may be made:—Circular of May 14th, 1912, as to the Parliamentary grant for sanatorium purposes; Circular of July 6th, 1912, and Memorandum as to arrangements for the treatment of tuberculosis, and administration of sanatorium benefit; Circular of July 25th, 1912, as to administration of sanatorium benefit; Circular of December 6th, 1912, as to schemes for institutional treatment of tuberculosis; Circular of February 25th, 1913, as to the provision of institutions, with a memorandum upon the construction and arrangement of inexpensive buildings; see also Circular of December 20th, 1912, as to the Public Health (Tuberculosis) Regulations, 1912.

(*q*) On this point the L. G. B. have issued a General Order of July 26th, 1912, prescribing regulations for the domiciliary treatment of tuberculosis.

Power to extend sanatorium benefit to dependants.

17.—(1) The Insurance Committee for any county or county borough may, if it thinks fit, extend sanatorium benefit to the dependants of the insured persons resident in the county, or any part of the county, or in the county borough, or any class of such dependants, and in such case the arrangements to be made by the Committee shall include arrangements for the treatment of such dependants, and the sums available for sanatorium benefit shall be applicable to the purpose.

(2) If in any year the amount available for defraying the expenses of sanatorium benefit is insufficient to meet the estimated expenditure on sanatorium benefit for insured persons and such dependants, the Insurance Committee may, through the Insurance Commissioners, transmit to the Treasury and the council of the county or county borough an account showing the estimated expenditure for the purpose and the amount of the sums available for defraying the expenses of sanatorium benefit, and the Treasury and council may if they think fit sanction such expenditure.

(3) The Treasury and the council of the county or county borough sanctioning such expenditure as aforesaid shall thereupon each be liable to make good, in the case of the Treasury out of moneys provided by Parliament, and, in the case of the council of the county or county borough, out of the county fund or borough fund or borough rate, as the case may be, one-half of any sums so sanctioned by them and expended by the Insurance Committee on sanatorium benefit for insured persons and their dependants in the course of the year in excess of the amount available for defraying the expenses of the Committee on sanatorium benefit.

Power of councils of boroughs and districts to contribute to certain expenditure on medical and sanatorium benefits.

22.—(1) The council of any borough or urban or rural district may agree (*r*) with the council of the county in which the borough or district is situate to repay to the latter council the whole or any part of the sums payable by that council in accordance with the provisions of this Part of this Act towards the excess expenditure on medical or sanatorium benefit (*s*) so far as such excess is properly attributable to the borough or district, and any sums payable by the council of the borough or district in pursuance of such an agreement shall be payable, in the case of a borough, out of the borough fund or borough rate, and, in any other case, as part of the general expenses incurred by the council in the execution of the Public Health Acts.

(2) The agreement may provide that the county council shall not raise any sum on account of any expenditure incurred by them under this Part of this Act for the purpose to which the agreement relates within the borough or urban or rural district the council of which has entered into such agreement, during the continuance of such agreement.

Income.

61.—(3) It shall be lawful for any local authority, out of any fund or rate out of which the expenses of the authority are payable, to subscribe such sums as it may think fit towards the general purposes of the Insurance Committee.

EXCESSIVE SICKNESS.

Inquiries into causes of excessive sickness, &c.

63 (*t*).—(1) Where it is alleged by the Insurance Commissioners or by any approved society or Insurance Committee that the sickness which has taken place among any insured persons, being, in the case where the allegation is

(*r*) By making such an agreement a healthy district will be able to avoid contributing through the county rate to expenses incurred in treating patients from less healthy districts.

(*s*) *I.e.*, sums payable under s. 15 (8) and s. 17 (3), *ante*.

(*t*) This section imposes a serious liability upon local authorities, property owners and employers of labour, who may be called upon to indemnify the societies or committees whose funds have been drained by preventible illness.

made by a society or committee, persons for the administration of whose sickness and disablement benefits the society or committee is responsible, is excessive, and that such excess is due to the conditions or nature of employment of such persons, or to bad housing or insanitary conditions in any locality, or to an insufficient or contaminated water supply, or to the neglect on the part of any person or authority to observe or enforce the provisions of any Act relating to the health of workers in factories, workshops, mines, quarries, or other industries, or relating to public health, or the housing of the working classes, or any regulations made under any such Act, or to observe or enforce any public health precautions, the Commissioners or the society or committee making such allegation may send to the person or authority alleged to be in default a claim for the payment of the amount of any extra expenditure alleged to have been incurred by reason of such clause as aforesaid, and, if the Commissioners, society, or committee and such person or authority fail to arrive at any agreement on the subject, may apply to the Secretary of State or the Local Government Board, as the case may require, for an inquiry, and thereupon the Secretary of State or Local Government Board may appoint a competent person to hold an inquiry.

(2) If, upon such inquiry being held, it is proved to the satisfaction of the person holding the inquiry that the amount of such sickness has—

(i.) during a period of not less than three years before the date of the inquiry; or

(ii.) if there has been an outbreak of any epidemic, endemic or infectious disease, during any less period;

been in excess of the average expectation of sickness by more than ten per cent., and that such excess was in whole or in part due to any such cause as aforesaid, the amount of any extra expenditure found by the person holding the inquiry to have been incurred under this Part of this Act by any societies or committees where the allegation is made by the Insurance Commissioners, or, if the allegation is made by a society or committee, by the society or committee, in question, by reason of such cause shall be ordered by him to be made good in accordance with the following provisions:—

(a) Where the excess or such part thereof as aforesaid is due to the conditions or nature of the employment or to any neglect on the part of any employer to observe or enforce any such Act or regulation as aforesaid, it shall be made good by the employer:

(b) Where such excess or such part thereof as aforesaid is due to bad housing or insanitary conditions in the locality, or to any neglect on the part of any local authority to observe or enforce any such Act or regulation or such precautions as aforesaid, it shall be made good by such local authority as appears to the person holding the inquiry to have been in default, or, if due to the insanitary condition of any particular premises, shall be made good either by such authority or by the owner, lessee, or occupier of the premises who is proved to the satisfaction of the person holding the inquiry to be responsible:

(c) Where the excess or such part thereof as aforesaid is due to an insufficient or contaminated water supply, it shall be made good by the local authority, company, or person by whom the water is supplied, or who having imposed upon them the duty of affording a water supply have refused or neglected to do so, unless the local authority, company, or person prove that such insufficiency or contamination was not due to any default on the part of the authority, company, or person, but arose from circumstances over which they had no control.

(3) Where any such inquiry as aforesaid is held in respect of bad housing or insanitary conditions in any locality, it shall be lawful for the local authority to serve notice upon the owner, lessee, or occupier of any premises which are

the subject-matter of the inquiry, and, where it is proved that such a notice has been served and that any such extra expense as aforesaid, or any part thereof, has been caused by the act or default of such owner, lessee or occupier, the person holding the inquiry may order the owner, lessee or occupier to repay to the local authority the amount of the extra expenditure or part thereof which has been so caused.

(4) For the purposes of this section, the average expectation of sickness shall be calculated in accordance with the tables prepared by the Insurance Commissioners for the purpose of valuations under this Part of this Act, but any excessive sickness attributable to any disease or disablement which is due to any disease or injury in respect of which damages or compensation are payable under the Employers' Liability Act, 1880, or the Workmen's Compensation Act, 1906, or at common law, shall not be taken into account.

(5) The Insurance Commissioners shall make regulations as to the procedure on inquiries under this section, and a person holding an inquiry under this section shall have all such powers as an inspector of the Local Government Board has for the purposes of any inquiry under the Public Health Acts, and shall have power to order how and by what parties costs, including such expenses as the Secretary of State or Local Government Board may certify to have been incurred by them, are to be paid, and an order made by such person under this section may, by leave of the High Court, be enforced in the same manner as a judgment or order of the Court to the same effect:

Provided that a society or committee shall not be ordered to pay the costs of the other party to the inquiry if the person holding the inquiry certifies that the demand for an inquiry was reasonable under the circumstances, and, when he so certifies, the Treasury may repay to the society or committee the whole or any part of the costs incurred by it.

(6) Without prejudice to any other method of recovery, any sum ordered under this section to be paid by a local authority may, in accordance with the regulations of the Local Government Board with the approval of the Treasury, be paid out of the Local Taxation Account, and deducted from any sums payable either directly or indirectly out of that account to the local authority.

(7) For the purposes of this section, any expenditure on any benefit administered by an Insurance Committee shall be deemed to be expenditure of that Committee, but any sums paid to any such Committee under this section to meet extra expenditure on sickness benefit or disablement benefit shall be dealt with for the benefit of deposit contributors in accordance with regulations made by the Insurance Commissioners.

(8) Where under this section any sum is paid to the Insurance Commissioners, the Insurance Commissioners shall apply the same in discharge of any expenses incurred by the Commissioners under this section and shall distribute the balance amongst the societies and committees which appear to the Commissioners to have incurred extra expense on account of the excessive sickness in such proportions as the Commissioners think just.

(9) Where an association of deposit contributors resident in any county or county borough has been formed under regulations made by the Insurance Commissioners, the Insurance Committee for the county or county borough shall, if so required by the association, take proceedings under this section on behalf and at the expense of the association.

SUPPLEMENTARY PROVISIONS.

Provision of sanatoria, &c.

64 (*u*).—(1) If under any other Act of the present session any sum is made available for the purposes of the provision of or making grants in aid to sanatoria and other institutions for the treatment of tuberculosis or such

(*u*) See the Finance Act, 1911, s. 16 (1) (b), *ante*, p. 2138.

other diseases as the Local Government Board with the approval of the Treasury may appoint, such sum shall be distributed by the Local Government Board with the consent of the Treasury in making grants for those purposes, and the Treasury before giving their consent shall consult with the Insurance Commissioners :

Provided that such sum shall be apportioned between England, Wales, Scotland, and Ireland in proportion to their respective populations ascertained in accordance with the returns of the census taken in the year nineteen hundred and eleven.

(2) If any such grant is made to a county council, the Local Government Board may authorise the county council to provide any such institution, and, where so authorised, the county council shall have power to erect buildings and to manage and maintain the institution and for that purpose to enter into agreements and make arrangements with Insurance Committees and other authorities and persons, and to do all such things as may be necessary for the purposes aforesaid, and any expenses of the county council, so far as not defrayed out of the grant, shall be defrayed out of the county fund as expenses for general county purposes, or, if the order of the Local Government Board so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order.

(3) For the purpose of facilitating co-operation amongst county councils, county borough councils, and other local authorities (not being Poor Law authorities) for the provision of such sanatoria and other institutions as aforesaid, the Local Government Board may by order make such provisions as appear to them necessary or expedient, by the constitution of joint committees, joint boards, or otherwise, for the joint exercise by such councils and authorities of their powers in relation thereto, and any such order may provide how, in what proportions, and out of what funds or rates the expenses of providing such institutions, so far as they are not defrayed out of grants under this section, are to be defrayed, and may contain such consequential, incidental, and supplemental provisions as may appear necessary for the purposes of the order, and an order so made shall be binding and conclusive in respect of the matters to which it relates.

(4) An Insurance Committee may, with the consent of the Insurance Commissioners, enter into agreements with any person or authority (other than a Poor Law authority) that, in consideration of such person or authority providing treatment in a sanatorium or other institution or otherwise for persons recommended by the Committee for sanatorium benefit, the Committee will contribute out of the funds available for sanatorium benefit towards the maintenance of the institution or provision of such treatment, such annual or other payment, and subject to such conditions and for such period as may be agreed, and any such agreement shall be binding on the Committee and their successors, and any sums payable by the Committee thereunder may be paid by the Insurance Commissioners and deducted from the sums payable to the Committee for the purposes of sanatorium benefit.

Priority of claims for contributions due by bankrupt employers.

110.—(1) There shall be included among the debts which, under section one of the Preferential Payments in Bankruptcy Act, 1888 (*x*), and section two hundred and nine of the Companies (Consolidation) Act, 1908 (*y*), are, in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all contributions payable under this Act by the bankrupt or the company in respect of employed contributors or workmen in an insured trade during the four months before the date of the receiving order, or, as the case may be,

51 & 52 Vict. c. 62.
8 Edw. 7, c. 69.

(*x*) See this section, *ante*, p. 1836.
(*y*) See this section, *ante*, p. 2110.

the commencement of the winding up or the winding-up order, and those Acts shall have effect accordingly, and formal proof of the debts to which priority is given under this section shall not be required except in cases where it may otherwise be provided by rules made under the Bankruptcy Act, 1883, or the Companies (Consolidation) Act, 1908.

46 & 47 Vict. c. 52.

(2) In the case of a winding up of a company within the meaning of the Stannaries Act, 1887, such contributions as aforesaid shall, if payable in respect of a miner, have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.

50 & 51 Vict. c. 43.

(3) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

THE SHOPS ACT, 1912.

(2 GEO. 5, c. 3.)

An Act to consolidate the Shops Regulation Acts, 1892 *to* 1911.

[29th March 1912.]

Conditions of Employment.

Hours of employment and meal times (*z*).

1.—(1) On at least one week day in each week (*a*) a shop assistant (*a*) shall not be employed about (*b*) the business of a shop (*b*) after half-past one o'clock in the afternoon:

Provided that this provision shall not apply to the week preceding a bank holiday (*a*) if the shop assistant is not employed on the bank holiday, and if on one week day in the following week in addition to the bank holiday the employment of the shop assistant ceases not later than half-past one o'clock in the afternoon (*c*).

(*z*) This section substantially re-enacts ss. 1, 8 (1), 13 (2), Schedule I., of the Shops Act, 1911, which never came into operation, being repealed by s. 22, *post.* There had been no earlier legislation on the subject.

Generally speaking, this section does not, if the employer so elects and takes certain steps, apply to shop assistants employed in the sale of "refreshments"; as to them, see the Shops Act, 1913, *post.* With one other exception, viz., under certain conditions and for limited periods in holiday resorts (s. 11, *post*), sub-s. (1) applies to the shop assistants in every shop, even though the shop itself may be one which need not be closed for a weekly half-holiday, and even though the assistants be members of the shopkeeper's family. The shopkeeper fixes the day (which may not be Sunday) on which each assistant is to have his half-holiday; he may fix different days for different assistants, and may vary the days fixed as often as he likes, so long as he complies with sub-s. 2 as to giving notice thereof.

(*a*) See definition in s. 19 (1), *post.* A firm gave no half-holiday in the week ending December 21st, but gave whole holidays in the following week on Christmas Day and Boxing Day. It was held that no offence was committed, Christmas Day being a weekday on which (in addition to one Bank Holiday—Boxing Day) the assistant was not employed after 1.30 p.m. (*Todd Burns & Co., Ltd.* v. *Dublin Corporation,* [1913] 2 I. R. 397).

(*b*) "Employed about" means "busy about" or "engaged in": therefore where a bookstall assistant, though ordered to take his weekly half-holiday on a certain afternoon, busied himself on that afternoon about the business of the bookstall, the employers, who had taken no steps under s. 14 (3), *post,* were held liable (*Ward* v. *W. H. Smith & Sons,* [1913] 3 K. B. 154; 77 J. P. 370). An assistant employed at one of several shops owned by a firm is employed about the business of the shop if distributing circulars advertising the firm's business generally without reference to any particular shop (*George* v. *James,* [1914] 1 K. B. 278; 78 J. P. 156).

(*c*) An employer may fix an assistant's weekly half-holiday to coincide with a bank holiday. If, however, he fixes it for another day in that week, and if he does not employ the assistant at all on the bank holiday, he need not give him a half-holiday in the preceding week.

(2) The occupier (*d*) of a shop shall fix, and shall specify in a notice in the prescribed form (*e*) which must be affixed in the shop in such manner (*f*) and at such time (*g*) as may be prescribed, the day of the week on which his shop assistants are not employed after half-past one o'clock, and may fix different days for different shop assistants.

(3) Intervals for meals shall be allowed to each shop assistant in accordance with the First Schedule (*h*) to this Act:

Provided that this provision shall not apply to a shop if the only persons employed as shop assistants are members of the family of the occupier of the shop, maintained by him, and dwelling in his house (*i*).

(4) In the case of any contravention of, or failure to comply with, the provisions of this section, the occupier (*k*) of the shop shall be guilty of an offence against this Act, and shall be liable to a fine (*l*) not exceeding:—

(a) in the case of a first offence, one pound;

(b) in the case of a second offence, five pounds; and

(c) in the case of a third or subsequent offence, ten pounds—

unless, in the case of a shop assistant employed after half-past one o'clock in contravention of this section, he proves that the shop assistant was employed merely for the purpose of serving a customer whom he was serving at the time, or, where the time of the closing of the shop was also half-past one o'clock (*m*), that the shop assistant was employed merely for the purpose of serving customers who were in the shop at that time.

Hours of employment of young persons (*n*).

2.—(1) No person under the age of eighteen years (in this Act referred to as a "young person") shall be employed in or about (*o*) a shop (*p*) for a longer period than seventy-four hours, including meal times, in any one week (*q*).

(2) No young person shall, to the knowledge of the occupier of the shop, be employed in or about a shop—

(a) having been previously on the same day employed in any factory or

(*d*) A brewery company owned a public-house which was in charge of a manager who held the licence. The Liverpool stipendiary convicted the company for not as "occupiers" specifying in a notice the day on which a "shop assistant"—*i.e.*, the licence-holder—was to take his half-holiday. The licence-holder had signed and posted a notice dealing with all other persons employed on the premises ((1913), 77 J. P. N. 402).

(*e*) For the prescribed form of notice, see Regulation No. 1 and Form I., *post*, pp. 2512, 2516.

(*f*) As to the prescribed manner of affixing, see Regulation No. 2, *post*, p. 2512.

(*g*) The employer may vary the day of his assistants' weekly half-holiday as often as he likes; but notice must be affixed before assistants to whom it relates cease work on the Saturday preceding the week during which it is to have effect; see Regulation 3, *post*, p. 2513.

(*h*) See this Schedule, *post*, p. 2160.

(*i*) If any assistant is not a member of the family, the provision applies to all assistants, whether members or not.

(*k*) As to the liability of other persons, and as to an occupier shifting the liability on to some one else, see s. 14 (2), (3), *post*. As to a limited company being an occupier, see p. 2152, note (*t*), *post*.

(*l*) As to the recovery of penalties, see s. 14 (1), *post*.

(*m*) As it may be under s. 4 (4), *post*.

(*n*) This section substantially reproduces the provisions of the Shop Hours Act, 1892, repealed by s. 22, *post*. As to restrictions on the employment of children under fourteen, see the Employment of Children Act, 1903, s. 3, *ante*, p. 2037.

(*o*) A boy employed by a newsagent fetched newspapers to the shop, delivered them at customers' houses, and sold them inside and outside the shop; he also worked in the shop, folding newspapers, tying up parcels, sweeping and cleaning windows; it was held under the Act of 1892, that the whole of his employment was "in or about" the shop (*Collman* v. *Roberts*, [1896] 1 Q. B. 457).

(*p*) For definition of "shop," see s. 19, *post*, but this section applies to wholesale shops and warehouses (sub-s. 5). It applies too to members of a shopkeeper's family.

(*q*) Note that unless sub-s. 2 applies there is no limit to the length of employment on any one day; for definition of "week," see s. 19, *post*.

1 Edw. 7, c. 22. workshop, as defined by the Factory and Workshop Act, 1901, for the number of hours permitted by that Act; or

(b) for a longer period than will, together with the time during which he has been previously employed on the same day in a factory or workshop, complete such number of hours as aforesaid.

(3) In every shop in which a young person is employed a notice shall be kept exhibited by the occupier of the shop in a conspicuous place referring to the provisions of this section and stating the number of hours in the week during which a young person may lawfully be employed in or about the shop (*r*).

(4) Where a young person is employed in or about a shop contrary to the provisions of this section, the occupier (*s*) of the shop shall be guilty of an offence against this Act, and liable to a fine (*t*) not exceeding one pound, or, where more than one young person is so employed, one pound for each young person, and, if the occupier (*s*) of a shop fails to comply with the provisions of this section with respect to notices, he shall be guilty of an offence against this Act, and liable to a fine (*t*) not exceeding forty shillings.

(5) This section (*u*) shall apply to wholesale shops, and to warehouses in which assistants are employed for hire, in like manner as if they were shops within the meaning of this Act, and the provisions of sections thirteen and fourteen of this Act shall, for the purposes of the enforcement of this section, be construed accordingly.

(6) This section shall not apply to any person wholly employed as a domestic servant (*x*).

Seats for female shop assistants (*y*).

3.—(1) In all rooms of a shop (*a*) where female shop-assistants (*a*) are employed in the serving of customers, the occupier of the shop shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female shop-assistants employed in each room.

(2) Any person (*s*) failing to comply with the provisions of this section shall be guilty of an offence against this Act, and liable for a first offence to a fine (*t*) not exceeding three pounds, and for a subsequent offence to a fine not less than one pound and not exceeding five pounds.

Closing of Shops.

Closing of shops on weekly half-holiday.

4.—(1) Every shop (*c*) shall, save as otherwise provided by this Act (*d*), be closed for the serving of customers (*e*) not later than one o'clock in the afternoon of one week day in every week (*c*).

(*r*) For a form of notice suggested, but not prescribed, by the Home Office, see *post*, p 2523.

(*s*) See note (*k*) on preceding page.

(*t*) As to the recovery of penalties, see s. 14 (1), *post*.

(*u*) The general definition of "shop" appears in s. 19, *post*.

(*x*) A page boy at an hotel slept on the premises; in the mornings he helped to dust the reception rooms, but he was principally employed as a messenger; the High Court approved a finding that he was not "wholly employed as a domestic servant" (*Savoy Hotel Co.* v. *London C. C.*, [1900] 1 Q. B. 665).

(*y*) This section reproduces in slightly varied language the provisions of the Seats for Shop Assistants Act, 1899, repealed by s. 22, *post*.

(*a*) See definitions in s. 19, *post*.

(*c*) See definition in s. 19, *post*.

(*d*) Certain shops are or may be exempted from this provision, see sub-ss. 4, 6, *infra*; but assistants employed in them must nevertheless have a half-holiday on some week-day in every week (see s. 1, *ante*). There are also special provisions as to bank holidays (sub-s. 5) and emergency sales (sub-ss. 7, 8), and as to shops in holiday resorts (s. 11, *post*).

(*e*) Other work (*e.g.*, tidying up) may be done, but assistants taking their half-holiday

(2) The local authority (*f*) may (*g*), by order (*h*), fix the day on which a shop is to be so closed (in this Act referred to as "the weekly half-holiday"), and any such order may either fix the same day for all shops, or may fix—

(a) different days for different classes of shops (*hh*); or

(b) different days for different parts of the district; or

(c) different days for different periods of the year:

Provided that—

(i.) where the day fixed is a day other than Saturday, the order shall (*i*) provide for enabling Saturday to be substituted for such other day; and

(ii.) where the day fixed is Saturday, the order shall (*i*) provide for enabling some other day specified (*k*) in the order to be substituted for Saturday;

as respects any shop in which notice (*l*) to that effect is affixed by the occupier, and that no such order shall be made unless the local authority, after making such inquiry as may be prescribed (*m*), are satisfied that the occupiers of a majority of each of the several classes of shops affected by the order approve the order (*n*).

(3) Unless and until such an order is made affecting a shop, the weekly half-holiday as respects the shop shall be such day as the occupier may specify in a notice affixed in the shop, but it shall not be lawful for the occupier of the shop to change the day oftener than once in any period of three months.

(4) Where the local authority (*f*) have reason to believe that a majority of the occupiers of shops of any particular class in any area are in favour of being exempted from the provisions of this section, either wholly or by fixing as the closing hour instead of one o'clock some other hour not later than two o'clock, the local authority, unless they consider that the area in question is unreasonably small, shall take steps to ascertain the wishes of such occupiers, and, if they are satisfied that a majority of the occupiers of such shops are in favour of the exemption, or, in the case of a vote being taken, that at least one half of the votes recorded by the occupiers of shops within the area of the class in question are in favour of the exemption, the local authority shall make an order exempting the shops of that class within the area from the provisions of this section either wholly or to such extent as aforesaid (*o*).

on that day must leave by 1.30 p.m. As to sales after 1 p.m. to customers in the shop at that hour, or in cases of illness, see sub-s. (7) and s. 1 (4), *ante*.

(*f*) As to the "local authority," see s. 13, *post*.

(*g*) If they do not, a shopkeeper fixes his own day (sub-s. 3).

(*h*) The order does not require confirmation. As to revocation of such an order, see s. 18 (2), *post*. For a model form of order, see Form C, *post*, p. 2522. An order under s. 11, *post*, exempting shopkeepers in holiday resorts from the obligation to close for the weekly half-holiday during a portion of the year should not be incorporated in an order under this sub-section. As to publication of such an order, see Regulation 22, *post*, p. 2516. There was power to order a weekly half-holiday under the Shops Act, 1904; see s. 22, *post*, as to how far existing orders under that Act were continued in force.

(*hh*) As to a butcher selling dripping on a day when provision and grocery shops (but not butchers' shops) ought to be closed, see *Schuch* v. *Banks*, [1914] 2 K. B. 491; 78 J. P. 229.

(*i*) The authority cannot insert conditions fettering a shopkeeper's right to elect between two days.

(*k*) The alternative day must be specified, and not left to the discretion of each shopkeeper.

(*l*) No special form of notice has been prescribed.

(*m*) Regulation 4, *post*, p. 2513, prescribes the inquiries to be made by an authority who contemplate making an order under this sub-section. As to the necessary register to be prepared, see Regulation 19, *post*, p. 2515; as to the method of taking a vote of occupiers, see Regulation 20, *post*, p. 2515.

(*n*) A person occupying more shops than one, has a vote in respect of each. As to "classes" of shops, see *Att.-Gen.* v. *Brighton Corporation*, *post*, p. 2513.

(*o*) Such an order does not require confirmation. As to revocation of such an order, see s. 18 (2), *post*. For a model form of order, see Form D, *post*, p. 2522. No hour

(5) Where a shop is closed during the whole day on the occasion of a bank holiday (*p*), and that day is not the day fixed for the weekly half-holiday, it shall be lawful for the occupier of the shop to keep the shop open for the serving of customers after the hour at which it is required under this section to be closed either on the half-holiday immediately preceding, or on the half-holiday immediately succeeding, the bank holiday.

(6) This section shall not apply to any shop in which the only trade or business carried on is trade or business of any of the classes mentioned in the Second Schedule (*q*) to this Act, but the local authority may, by order (*r*) made and revocable in the manner hereinafter provided with respect to closing orders (*s*), extend the provisions of this section to shops of any class exempted under this provision if satisfied that the occupiers of at least two-thirds of the shops of that class approve the order.

(7) In the case of any contravention of or failure to comply with any of the provisions of this section, the occupier (*t*) of the shop shall be guilty of an offence against this Act, and shall be liable to a fine (*u*) not exceeding—

(a) in the case of a first offence, one pound;

(b) in the case of a second offence, five pounds; and

(c) in the case of a third or subsequent offence, ten pounds:

Provided that the occupier of a shop shall not be guilty of an offence against this Act when a customer is served at any time at which the shop is required to be closed under this section if he proves either that the customer was in the shop before the time when the shop was required to be closed, or that there was reasonable ground for believing that the article supplied to the customer was required in the case of illness.

(8) Nothing in this section shall prevent customers from being served at a time when the shop in which they are sold is required to be closed with

later than 2 p.m. can be fixed; effect can only be given to a desire for a later closing hour by complete exemption.

There is apparently no power to make an order for part only of a year; but it would be possible to make and revoke orders at the beginning and end of every "season." The sub-section does not allow a general exemption of all shops; each class of shop must be dealt with separately. As to "classes," see *Att.-Gen.* v. *Brighton Corporation*, *post*, p. 2153.

Semble, whether an area is "unreasonably small" is not a question only of superficial area, but may partly depend upon whether out of similar shops of the same class, some are just within and others just without the proposed boundary (*R.* v. *Manchester City Council, Ex parte Batty* (1912), 77 J. P. 43, *per* CHANNELL, J.).

A council after ascertaining the wishes of the shopkeepers, of whom a majority desired exemption, rescinded their former resolution approving of the area selected and consenting to grant exemption; an application for a *mandamus* directing the council to make an exemption order was refused on the ground that, if the court could grant a *mandamus*, they ought not to do so in view of the circumstances under which the two resolutions were passed (*ibid.*).

The "steps" to be taken by the authority are in their discretion; the majority required is a majority of occupiers, not of shops as under sub-s. 2; and if a vote is taken, one-half of the votes recorded (not of the persons entitled to vote) is sufficient.

(*p*) See definition in s. 19, *post*.

(*q*) See this Schedule, *post*, p. 2160; as to mixed businesses, see s. 10 (1), *post*; as to post office shops, see s. 12, *post*.

(*r*) For model form of order, see Form E, *post*, p. 2522. It will be noticed that this does not merely declare the provisions of s. 4 to be extended to the particular class of shop, leaving the authority to make and revoke further orders under sub-s. 2, and (if necessary) sub-s. 4, as to the day and hour for closing. It appears to contemplate that the shopkeepers will ask for a particular day (and perhaps hour) and that any subsequent variation must be sanctioned by the Home Secretary.

(*s*) See ss. 5, 8, *post*.

(*t*) As to the liability of other persons, and as to an occupier shifting the liability on to some one else, see s. 14 (2), (3), *post*. A limited company can be fined as an "occupier" under this section (*Evans & Co., Ltd.* v. *London C. C.* (1914), 30 T. L. R. 509).

(*u*) As to recovery of penalties, see s. 14 (1), *post*.

victuals, stores, or other necessaries for a ship, on her arrival at or immediately before her departure from a port (*x*).

5.—(1) An order (in this Act referred to as "a closing order") made by a local authority (*y*), and confirmed by the Secretary of State in manner provided by this Act, may fix the hours on the several days of the week at which, either throughout the area of the local authority or in any specified part thereof, all shops (*a*) or shops of any specified class are to be closed for serving customers (*b*). Closing orders.

(2) The hour fixed by a closing order (in this Act referred to as "the closing hour") shall not be earlier than seven o'clock in the evening on any day of the week.

(3) The order may—

(a) define the shops and trades to which the order applies; and

(b) authorise sales after the closing hour in cases of emergency and in such other circumstances as may be specified or indicated in the order; and

(c) contain any incidental, supplemental, or consequential provisions which may appear necessary or proper (*c*).

(4) Nothing in a closing order shall apply to any shop in which the only trade or business carried on is trade or business of any of the classes mentioned in the Third Schedule (*d*) to this Act.

(5) If any person (*e*) contravenes the provisions of a closing order, he shall be guilty of an offence against this Act, and liable to a fine (*f*) not exceeding—

(a) in the case of a first offence, one pound;

(b) in the case of a second offence, five pounds; and

(c) in the case of a third or subsequent offence, twenty pounds:

Provided that nothing in this section or in any closing order shall render a person liable to any penalty for serving after the closing hour any customer who was in the shop before the closing hour.

6.—(1) Whenever a local authority (*y*) are satisfied that a primâ facie case is made out for making a closing order (*h*), the authority shall give Procedure for making orders (*g*).

(*x*) In a sea-port town it will probably be advisable to insert a similar provision in closing orders under s. 5.

(*y*) See s. 13, *post.*

(*a*) See definition in s. 19, *post.*

(*b*) For model forms of closing orders, see *post,* p. 2520. Under similar words in the Shop Hours Act, 1904, it was held that an authority might fix a closing hour to be observed on one or more days of the week, and need not fix one for every day (*Att.-Gen.* v. *Brighton Corporation* (1908), 77 L. J. Ch. 603). In the same case it was held in the court below, that barbers and hairdressers formed one sufficiently specific "class," and that an authority were not bound to distinguish between the different requirements of different shopkeepers in the same trade (77 L. J. Ch. 6); see also as to this point the Home Office Circular of April 4th, 1912.

Semble, when once an authority have made an order and submitted it for approval, the court will not interfere by injunction to restrain the authority from acting upon it (*Att.-Gen.* v. *Brighton Corporation, supra*).

See s. 22, *post,* as to how far existing orders made under the Shops Act, 1904, were continued in force. As to revocation of closing orders, see s. 8, *post.*

(*c*) See, *e.g.*, note (*x*), *supra,* and s. 10 (2), and s. 12 (1) (c), *post.*

(*d*) See this Schedule, *post,* p. 2161. As to "mixed" businesses, see s. 10 (2), *post.* As to post office shops, see s. 12, *post.*

(*e*) See note (*t*) on preceding page.

(*f*) As to recovery of penalties, see s. 14 (1), *post.*

(*g*) As to revoking orders, see s. 8, *post.*

(*h*) As soon as they are so satisfied they must cause the necessary register to be prepared: see Regulations 6, 19, *post,* pp. 2513, 2515.

public notice in the prescribed manner and in the prescribed form (*i*) of their intention to make an order, specifying therein a period (not being less than the prescribed period (*k*)) within which objections may be made to the making of the proposed order, and, if after taking into consideration any objections they may have received the local authority are satisfied (*l*) that it is expedient to make the order and that the occupiers of at least two-thirds in number of the shops to be affected by the order approve the order, they may make the order.

(2) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner (*m*), and the order shall be submitted to the Secretary of State (*n*), and the Secretary of State shall consider any objections to the order, and may either disallow the order or confirm the order with or without amendment.

(3) As soon as the Secretary of State has confirmed any order (*o*), the order shall become final and have the effect of an Act of Parliament:

Provided that every closing order shall be laid before each House of Parliament as soon as may be after it is confirmed, and, if an address is presented to His Majesty by either House within the next subsequent forty days on which that House has sat after any such order is laid before it praying that the order may be cancelled, His Majesty in Council may annul the order, and any order so annulled shall thenceforth become void and of no effect, but without prejudice to any proceedings which may in the meantime have been taken under the order and without prejudice to the power of making any new closing order.

Local inquiries for the purpose of promoting and facilitating early closing (*p*).

7.—(1) Where it appears to the Secretary of State, on the representation of the local authority (*q*) or a joint representation from a substantial number of occupiers of shops and shop assistants in the area of the local authority, that it is expedient to ascertain the extent to which there is a demand for early closing in any locality, and to promote and facilitate the making of a closing order therein, the Secretary of State may appoint a competent person to hold a local inquiry.

(2) If, after holding such an inquiry and conferring with the local authority, it appears to the person holding the inquiry that it is expedient that a closing order should be made, he shall prepare a draft order and submit it to the Secretary of State together with his report thereon.

(3) If the Secretary of State, after considering the draft order and report, and any representations which the local authority may have made in respect thereof, is of opinion that it is desirable that a closing order should be made, he may communicate his decision to the local authority, and thereupon there shall be deemed to be a primâ facie case for making a closing order in accordance with the terms of the draft order, subject to such modifications (if any) as the Secretary of State may think fit.

(4) The person who held the inquiry shall, if so directed by the Secretary

(*i*) As to the prescribed manner and form, see Regulation 7, and Form A, *post*, pp. 2514, 2518.

(*k*) The prescribed period is four weeks (Regulation 8, *post*, p. 2514).

(*l*) Regulation 9, *post*, p. 2514, prescribes how they are to satisfy themselves as to the wishes of the occupiers concerned; as to the method of taking a vote of occupiers, see Regulation 20, *post*, p. 2515.

(*m*) As to the giving of this notice, see Regulation 10, *post*, p. 2514.

(*n*) As to the documents, etc., to be submitted with the order, see Regulation 11, *post*, p. 2514.

(*o*) As to publication of such an order, see Regulation 22, *post*, p. 2516.

(*p*) Regulations 12—18, *post*, pp. 2514, 2515, provide for the holding of such local inquiries. See further as to their object a Home Office Circular of April 4th, 1912. As to the expenses, see s. 15, *post*.

(*q*) See s. 13, *post*.

of State on the application of the local authority, assist and co-operate with the local authority in taking the steps preliminary to making the order.

8. The Secretary of State may, at any time on the application of the local authority, revoke a closing order either absolutely or so far as it affects any particular class of shops, and, if at any time it is made to appear to the satisfaction of the local authority that the occupiers of a majority of any class of shops to which a closing order applies are opposed to the continuance of the order, the local authority shall apply to the Secretary of State to revoke the order in so far as it affects that class of shops, but any such revocation shall be without prejudice to the making of any new closing order. Revocation of closing orders (*r*).

Provisions with respect to Special Classes of Trade or Business.

9. It shall not be lawful in any locality to carry on in any place not being a shop (*s*) retail trade or business of any class at any time when it would be unlawful in that locality to keep a shop open for the purposes of retail trade or business of that class, and, if any person carries on any trade or business in contravention of this section, this Act shall apply as if he were the occupier of a shop and the shop were being kept open in contravention of this Act: Provisions as to trading elsewhere than in shops.

Provided that—

(a) the prohibition imposed by this section shall, as respects any day other than the weekly half-holiday, be subject to such exemptions and conditions (if any) as may be contained in closing orders; and

(b) nothing in this section shall be construed as preventing a barber or hairdresser from attending a customer in the customer's residence, or the holding of an auction sale of private effects in a private dwelling-house; and

(c) nothing in this section shall apply to the sale of newspapers.

10.—(1) Where several trades or businesses are carried on in the same shop, and any of those trades or businesses is of such a nature that, if it were the only trade or business carried on in the shop, the shop would be exempt from the obligation to be closed on the weekly half-holiday, the exemption shall apply to the shop so far as the carrying on of that trade or business is concerned, subject, however, to such conditions as may be prescribed (*t*). Provisions as respects shops where more than one business is carried on.

(2) Where several trades and businesses are carried on in the same shop and any of those trades or businesses are of such a nature that if they were the only trades or businesses carried on in the shop a closing order would not apply to the shop, the shop may be kept open after the closing hour for the purposes of those trades and businesses alone, but on such terms and under such conditions as may be specified in the order (*u*).

(*r*) Orders made under s. 4 (6) are on the same footing as closing orders. Other orders may be revoked by the local authority, see s. 18, *post*. Before asking the Home Secretary to revoke an order the authority must ascertain the wishes of the shopkeepers concerned: see Regulation 23, *post*, p. 2516.

As to publication of notice of revocation, see Regulation 24, *post*, p. 2516.

(*s*) *E.g.*, in the streets, or in a house temporarily used for the purpose (*Cowden* v. *McEvoy*, [1914] 3 K. B. 108). For definitions of "shop," "retail trade or business," see s. 19, *post*. *Semble*, this section cannot apply to the weekly half-holiday where each shopkeeper fixes his own half-holiday at will. But, when an order fixes (say) Thursday for the half-holiday, trading in the streets, or in places not being shops, on that afternoon is forbidden, although an individual shopkeeper might elect to substitute Saturday for his own shop (*Cowden* v. *McEvoy*, *supra*). As to weekly half-holidays, see s. 4, and as to closing orders, see s. 5, *ante*.

(*t*) This sub-section relates to s. 4, *ante*. For the prescribed conditions, see Regulation 5, *post*, p. 2513; certain notices must be affixed, and, as far as reasonably practicable, no goods connected with a business not exempted may be exhibited.

(*u*) This sub-section relates to s. 5, *ante*.

(3) Where several trades or businesses are carried on in the same shop, the local authority may require the occupier of the shop to specify which trade or business he considers to be his principal trade or business, and no trade or business other than that so specified shall, for the purpose of determining a majority under this Act, be considered as carried on in the shop unless the occupier of the shop satisfies the local authority that it forms a substantial part of the business carried on in the shop (*x*).

Special provisions as to holiday resorts.

11.—(1) In places frequented as holiday resorts (*y*) during certain seasons of the year, the local authority may by order (*z*) suspend, for such period or periods as may be specified in the order, not exceeding in the aggregate four months in the year, any obligation imposed by this Act to close shops on the weekly half-holiday (*a*).

(2) Where the occupier of any shop in any place in which any such order of suspension is in force satisfies the local authority that it is the practice (*b*) to allow all his shop assistants a holiday on full pay of not less than two weeks in every year, and keeps affixed in his shop a notice to that effect, the requirement (*c*) that on one day in each week a shop assistant shall not be employed after half-past one o'clock shall not apply to the shop during such period or periods as aforesaid.

Application to Post Office business.

12.—(1) Where Post Office business is carried on in any shop in addition to any other business, this Act shall apply to that shop subject to the following modifications:—

(a) If the shop is a telegraph office, the obligation to close on the weekly half-holiday shall not apply to the shop so far as relates to the transaction of Post Office business thereat:

(b) Where the Postmaster-General certifies that the exigencies of the postal service require that Post Office business should be transacted in any such shop at times when under the provisions of this Act relating to the weekly half-holiday the shop would be required to be closed, or under conditions not authorised by section one of this Act, the shop shall, for the purpose of the transaction of Post Office business, be exempted from the provisions of this Act to such extent as the Postmaster-General may certify to be necessary for the purpose:

Provided that in such cases the Postmaster-General shall make the best arrangements that the exigencies of the postal service allow with a view to the conditions of employment of the persons employed being on the whole not less favourable than those secured by this Act:

(*x*) The effect of this provision is that a shopkeeper selling a little drapery as a mere adjunct to a distinct business, but being in no real sense a draper, will not be entitled to vote on questions affecting drapers. In connection with this sub-section, see Regulations 4 (1), 6 and 19, *post*, pp. 2513 *et seq.*, as to preparation of a register of occupiers of shops.

(*y*) "Holiday resort" is not defined: presumably it means a resort frequented by holiday makers at particular seasons of the year as opposed to one where the influx of visitors is not appreciably greater at one time than at another. If an authority wrongly treat their town as a holiday resort, the validity of their order could apparently be impugned in the courts.

(*z*) As to revocation of such an order, see s. 18 (2), *post*. For a model form of order, see Form F, *post*, p. 2523. The order, if made at all, must apparently apply to all classes of shops. For this reason it should be kept distinct from orders under s. 4, *ante*, fixing the day and hour for half-holiday closing.

(*a*) *I.e.*, under s. 4.

(*b*) The authority must be satisfied as to the shopkeeper's practice on the point. See as to this the Home Office Circular of April 4th, 1912. *Semble*, the holiday must be one of two consecutive weeks.

(*c*) *I.e.*, in s. 1, *ante*.

(c) The provisions contained in any closing order imposing terms or conditions on the keeping open of any such shop after the closing hour for the transaction of Post Office business shall be subject to the approval of the Postmaster-General.

(2) Save as aforesaid, nothing in this Act shall apply to Post Office business, or to any premises in which Post Office business is transacted.

Enforcement of Act.

Powers and duties of local authorities.

13.—(1) It shall be the duty of every local authority (*d*) to enforce within their district the provisions of this Act, and of the orders made thereunder or under any enactment repealed by this Act (*e*), and for that purpose to institute and carry on such proceedings in respect of failures to comply with or contraventions of this Act and such orders as aforesaid as may be necessary to secure the observance thereof, and to appoint inspectors (*f*); and an inspector so appointed shall, for the purposes of his powers and duties, have in relation to shops all the powers conferred in relation to factories and workshops on inspectors by section one hundred and nineteen of the Factory and Workshop Act, 1901 (*g*), and that section and section one hundred and twenty-one (*h*) of the same Act shall apply accordingly; and an inspector may, if so authorised by the local authority, institute and carry on any proceedings under this Act on behalf of the authority (*i*). 1 Edw 7, c. 22

(2) In this Act the expression "local authority" means —

as respects the city of London, the common council;

as respects any municipal borough, the council of the borough;

as respects any urban district with a population according to the returns of the last published census for the time being of twenty thousand or upward, the district council;

elsewhere, the county council:

Provided that a county council may, with the approval of the Secretary of State, make arrangements with the council of an urban district in the county with a population of less than twenty thousand, or with the council of a rural district, for the exercise by the council of that district as agents for the county council, on such terms and subject to such conditions as may be agreed on, of any powers of the county council under this Act within the district, and the council of the district may, as part of the agreement, undertake to pay the whole or any part of the expenses incurred in connection with the exercise of the powers delegated to them, and the London County Council may, with the like approval, make similar arrangements with the council of any metropolitan borough.

(3) The expenses of a local authority under this Act (including any expenses which a council undertake to pay as aforesaid) shall be defrayed—

in the case of the common council of the city of London, out of the general rate;

(*d*) For definition of "local authority," see next subsection.

(*e*) As to closing orders made under the repealed Shops Act, 1904, continuing in force until expressly revoked, see proviso to s. 22, *post.*

(*f*) The Home Secretary deprecated the appointment of police officers as whole time or part time inspectors under this Act, see Home Office Circular of June 28th, 1912. See the same Circular for suggestions as to how the police may nevertheless render assistance in enforcing the Act.

(*g*) This section (see *ante*, p. 2005) gives to an inspector wide powers of entering and inspecting shops and of questioning persons found therein.

(*h*) This section (see *ante*, p. 2007) requires an inspector on applying for admission to produce a certificate of his appointment if it be asked for. A form of certificate is prescribed, see Regulation 25 and Form V., *post*, pp. 2516, 2518.

(*i*) Presumably a general authority will suffice. It should be by resolution: *cf. Duchesne* v. *Finch* (1912), 76 J. P. 377; *Watt* v. *Hegarty* (1913), 47 Ir. L. T. 86.

in the case of the council of a borough, out of the borough fund or borough rate;

in the case of a district council, as part of the general expenses incurred in the execution of the Public Health Acts (*k*);

in the case of a county council, as expenses for special county purposes;

in the case of a metropolitan borough council, as part of the expenses of the council.

Provisions with respect to offences.

14.—(1) All offences against this Act shall be prosecuted, and all fines under this Act shall be recovered in like manner as offences and fines are prosecuted and recovered under the Factory and Workshop Act, 1901, and sections one hundred and forty-three to one hundred and forty-six of that Act, and so much of section one hundred and forty-seven thereof as relates to evidence respecting the age of any person, so far as those provisions are applicable, shall have effect as if re-enacted in this Act and in terms made applicable thereto (*l*):

Provided that all fines imposed in any proceedings instituted by or on behalf of a local authority in pursuance of their powers and duties under this Act shall be paid to the local authority and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed.

(2) Where an offence for which the occupier of a shop is liable under this Act, has, in fact, been committed by some manager, agent, servant, or other person, the manager, agent, servant, or other person shall be liable to the like penalty as if he were the occupier.

(3) Where the occupier of a shop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, he proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

General Provisions.

Expenses of Secretary of State.

15. Any expenses incurred by the Secretary of State under this Act, including the remuneration of any person holding a local inquiry under section seven of this Act, shall, to such extent as may be sanctioned by the Treasury, be paid out of moneys provided by Parliament.

Local inquiries.

16. In addition to the local inquiries which the Secretary of State is empowered to hold under section seven of this Act, the Secretary of State may cause a local inquiry to be held for the purposes of any of his powers and duties under this Act, and the costs incurred in relation to any such last-mentioned inquiry, including the salary of any officer engaged in the inquiry, not exceeding three guineas a day, shall be paid by the local authority concerned, and the Secretary of State may certify the amount of the costs incurred. Any sums so certified shall be a debt to the Crown from the local authority (*m*).

(*k*) See *ante*, pp. 468 *et seq.*
(*l*) See these sections, *ante*, pp. 2011, 2012.
(*m*) They would therefore be recoverable by an extent of the authority's property.

17. The Secretary of State may make regulations (*n*)— Regulations.

(a) for prescribing anything which under this Act is to be prescribed; and

(b) as to the mode of ascertaining the opinion of occupiers of shops; and

(c) as to conduct of local inquiries and matters incidental thereto; and

(d) as to the procedure for obtaining the revocation of a closing order; and

(e) generally for carrying into effect the provisions of this Act.

18.—(1) Any order made by a local authority under this Act may be proved by the production of a copy thereof certified to be a true copy by a person purporting to be the clerk of the local authority by whom the order is made. Proof and revocation of orders.

(2) Any order made by a local authority under this Act may, unless some other method of revocation is provided by this Act, be revoked by an order made in the like manner and subject to the like approval, if any, as the original order (*o*).

19.—(1) In this Act (*p*)— Interpretation and saving.

The expression "shop" (*q*) includes any premises where any retail trade or business is carried on;

The expression "retail trade or business" includes the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors, and retail sales by auction, but does not include the sale of programmes and catalogues and other similar sales at theatres and places of amusement;

The expression "shop assistant" means any person wholly or mainly employed in a shop in connexion with the serving of customers or the receipt of orders or the despatch of goods (*qq*);

The expression "bank holiday" includes any public holiday or day of public rejoicing or mourning;

The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

(*n*) Regulations (see *post*, pp. 2512 *et seq*,) dated April 1st, 1912 (Stat. R. & O., No. 316 of 1912), have been made under this section.

By Regulation 21 (*post*, p. 2516) no informality in complying with the Regulations is to frustrate the making of, or invalidate, any order.

(*o*) Closing orders under s. 5 and orders made under s. 4 (6), which require confirmation by the Home Secretary, can only be revoked by him, see s. 8, *ante*. The authority may themselves revoke other orders: *cf*. Interpretation Act, 1889, s. 32 (3). Before doing so, they must ascertain the wishes of the shopkeepers concerned: see Regulation 23, *post*, p. 2516.

As to publication of notice of revocation, see Regulation 24, *post*, p. 2516.

(*p*) As to these definitions, see the Home Office Memorandum of March, 1912.

(*q*) In the Shop Hours Act, 1892, unless the context otherwise required, "shop" meant "retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire," and included "licensed public houses and refreshment houses of any kind." A building used solely as a high-class hotel and restaurant, having no bar or counter for the sale of liquor, and not being in the ordinary sense of the term a "public house," although fully licensed under the Alehouse Act, 1828, was held to be a "public house," and therefore a "shop" within this definition (*Savoy Hotel Co.* v. *London C. C.*, *ante*, p. 2150). A boy employed at the railway bookstall at R. went every morning to the village two miles off to deliver newspapers; he then sold newspapers for a short time at the station before returning to R.; for the purposes of such sale, he erected each day a stall consisting of a board upon trestles. It was held that the stall was probably a "shop" for some purposes of the Act, but not for the purposes of s. 4 (see s. 2 (3) of this Act), as to exhibiting a notice, because the boy was really employed at R., where a notice was duly exhibited (*Smith & Son* v. *Kyle*, [1902] 1 K. B. 286). See also *Ward* v. *Smith & Son*, *ante*, p. 2148. As to a kitchenmaid in a restaurant being a "shop assistant," see *Melhuish* v. *London C. C.* (1914), 30 T. L. R. 527.

For the purposes of s. 2, wholesale shops and warehouses are to be treated as shops (see s. 2 (5)).

(2) Nothing in this Act shall apply to any fair lawfully held or any bazaar or sale of work for charitable or other purposes from which no private profit is derived.

20. [*Scotland.*]

21. [*Ireland.*]

Short title, commencement, and repeal.

22.—(1) This Act may be cited as the Shops Act, 1912.

(2) This Act shall come into operation on the first day of May nineteen hundred and twelve.

(3) The Shops Regulation Acts, 1892 to 1911 (*r*), are hereby repealed:

4 Edw. 7, c. 31. Provided that any closing order made under the Shop Hours Act, 1904 (*s*), which is in force at the commencement of this Act, shall continue in force until revoked in accordance with the provisions of this Act, except in so far as it fixes a closing hour earlier than seven o'clock for any shop to which the provisions of this Act with respect to the weekly half-holiday apply.

SCHEDULES.

Section 1.

FIRST SCHEDULE.

INTERVALS FOR MEALS.

Intervals for meals shall be arranged so as to secure that no person shall be employed for more than six hours without an interval of at least twenty minutes being allowed during the course thereof.

Without prejudice to the foregoing provision—

(1) where the hours of employment include the hours from 11.30 a.m. to 2.30 p.m., an interval of not less than three-quarters of an hour shall be allowed between those hours for dinner; and

(2) where the hours of employment include the hours from 4 p.m. to 7 p.m., an interval of not less than half-an-hour shall be allowed between those hours for tea;

and the interval for dinner shall be increased to one hour in cases where that meal is not taken in the shop, or in a building of which the shop forms part or to which the shop is attached:

Provided that an assistant employed in the sale of refreshments or in the sale by retail of intoxicating liquors need not be allowed the interval for dinner between 11.30 a.m. and 2.30 p.m., if he is allowed the same interval so arranged as either to end not earlier than 11.30 a.m. or to commence not later than 2.30 p.m., and the same exemption shall apply to assistants employed in any shop on the market day in any town in which a market is held not oftener than once a week, or on a day on which an annual fair is held.

Section 4.

SECOND SCHEDULE.

TRADES AND BUSINESSES EXEMPTED FROM THE PROVISIONS AS TO WEEKLY HALF-HOLIDAY.

The sale by retail of intoxicating liquors.

The sale of refreshments, including the business carried on at a railway refreshment room.

(*r*) The Shops Regulation Acts, 1892 to 1911, were: (i.) the Shop Hours Act, 1892, as to hours of employment of young persons, substantially re-enacted in s. 2, *ante*; (ii.) the Shop Hours Act, 1893, as to salaries of inspectors; (iii.) the Shop Hours Act, 1895, passed merely to remedy a draftsman's omission disclosed by *Hammond* v. *Pulsford*, [1895] 1 Q. B. 223; (iv.) the Seats for Shop Assistants Act, 1899, substantially re-enacted in s. 3, *ante*; (v.) the Shop Hours Act, 1904, as to closing orders, substantially re-enacted in ss. 5 *et seq.*, *ante*; and (vi.) the Shop Hours Act, 1911, as to hours of employment and meal times and weekly half-holidays, see now ss. 1, 4, *ante*. This last Act never came into operation.

(*s*) Such orders could combine weekly half-holiday and ordinary closing provisions.

The sale of motor, cycle, and air-craft supplies and accessories to travellers (*t*).
The sale of newspapers and periodicals.
The sale of meat, fish, milk, cream, bread, confectionery, fruit, vegetables, flowers, and other articles of a perishable (*u*) nature.
The sale of tobacco and smokers' requisites.
The business carried on at a railway bookstall on or adjoining a railway platform.
The sale of medicines and medical and surgical appliances.
Retail trade carried on at an exhibition or show, if the local authority certify that such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show.

THIRD SCHEDULE.

Section 5.

Trades and Businesses exempted from Provisions of Closing Orders.

The sale by retail of intoxicating liquors.
The sale of refreshments for consumption on the premises.
The business carried on at a railway refreshment room.
The sale of newspapers.
The sale of tobacco and smokers' requisites.
The business carried on at a railway bookstall.
The sale of medicines and medical and surgical appliances.
Post Office business.

FOURTH SCHEDULE.

[*Ireland.*]

FIFTH SCHEDULE.

[*Ireland.*]

THE SHOPS ACT, 1913.

(2 & 3 Geo. 5, c. 24.)

An Act to amend the Shops Act, 1912, *in its application to premises for the sale of refreshments.* [7th March 1913.]

Amendment of 2 Geo. 5, c. 3, in its application to premises for the sale of refreshments.

1.—(1) The provisions of section one (*x*) of the Shops Act, 1912, shall not apply to shop assistants employed in any premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, if their employment is wholly or mainly in connexion with the sale of intoxicating liquors or refreshments for consumption on the premises, and if the occupier of the premises, by such notice as is hereinafter mentioned, signifies that he elects that instead of those provisions the following provisions shall apply :—

(a) No such assistant shall be employed for more than sixty-five hours in any week exclusive of meal times.

(*t*) This provision only includes the sale of supplies and accessories for motors, cycles, and air-craft and not the sale of other supplies or accessories to travellers (*Williams* v. *Gosden*, ([1914] 1 K. B. 35; 77 J. P. 464).

(*u*) The Home Secretary has been advised that "preserved" foods, etc., are not "of a perishable nature." Butter has been held to be "perishable" (*London C. C.* v. *Welford's Surrey Dairies, Ltd.*, [1913] 2 K. B. 529; 77 J. P. 206). *Semble,* "run honey" is not confectionery (*ibid.*).

(*x*) See this section, *ante*, p. 2148.

(b) Provision shall be made for securing to every such assistant—

(i.) thirty-two whole holidays on a week day in every year, of which at least two shall be given within the currency of each month and which shall comprise a holiday on full pay of not less than six consecutive days;

(ii.) twenty-six whole holidays on Sunday in every year, so distributed that at least one out of every three consecutive Sundays shall be a whole holiday:

Provided that two half holidays on a week day shall be deemed equivalent to one whole holiday on a week day.

(c) Intervals for meals shall be allowed to every such assistant amounting on a half holiday to not less than three-quarters of an hour, and on every other day to not less than two hours, and no assistant shall be employed for more than six hours without being allowed an interval of at least half an hour:

Provided that this provision shall not apply if the only persons employed as such shop assistants are members of the family of the occupier of the premises maintained by him and dwelling in his house.

(d) The occupier shall affix and constantly maintain in a conspicuous position in the premises a notice in the prescribed form referring to the provisions of this section, and stating the steps taken with a view to compliance therewith.

(2) Where the occupier of any premises has signified as aforesaid that he elects that the foregoing provisions shall apply, and any of those provisions are not complied with, the occupier of the premises shall be guilty of an offence against the Shops Act, 1912, and shall be liable to a fine not exceeding:—

(a) in the case of a first offence, one pound;

(b) in the case of a second offence, five pounds; and

(c) in the case of a third or subsequent offence, ten pounds.

(3) For the purposes of this section, the expression "half holiday" means a day on which the employment of an assistant ceases not later than three o'clock in the afternoon and on which he is not employed for more than six hours including meal time.

(4) A notice under this section may be withdrawn by the occupier of the shop at the expiration of a year from the date when it was given, and thereafter at the expiration of any succeeding year, and upon any such withdrawal section one of the Shops Act, 1912, shall apply to the shop in like manner as before the notice was given.

(5) The Shops Act, 1912, as amended by this Act, shall, in its application to any premises in respect to which a notice under this section is in force, have effect as though the definition of "shop assistant" included all persons wholly or mainly employed in any capacity at the premises in connexion with the business there carried on.

Short title and extent.

2.—(1) This Act may be cited as the Shops Act, 1913, and shall be construed as one with the Shops Act, 1912; and the Shops Act, 1912, and this Act may be cited together as the Shops Acts, 1912 and 1913.

(2) This Act shall not extend to shops in Ireland in which the business of the sale by retail of intoxicating liquors is carried on.

THE FABRICS (MISDESCRIPTION) ACT, 1913.

(3 & 4 GEO. 5, c. 17.)

An Act to prevent the Misdescription of Fabrics. [15th August 1913.]

1. It shall not be lawful for any person to sell, or expose, or have in his possession for sale, any textile fabric either in the piece, or made up into garments, or in any other form, to which is attributed expressly or inferentially the quality of non-inflammability, or safety from fire, or any degree of such quality of non-inflammability or safety from fire—

Prohibition of sale with misleading description as to inflammability.

(1) by wording or marking, descriptive or otherwise—

(a) upon the material; or

(b) upon any wrapper or band; or

(c) contained in any letterpress or writing referring to the material; or

(2) by verbal representation at the time of sale;

unless such textile fabric conforms to such standard of non-inflammability as may be prescribed by regulations (*y*) to be made by the Secretary of State, and, if any person sells, or has in his possession, textile fabric in contravention of this Act, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence, ten pounds, or, in the case of a second or subsequent offence, fifty pounds.

2. All regulations made by the Secretary of State under this Act shall be laid before Parliament as soon as may be after they are made, and the Rules Publication Act, 1893, shall apply to such regulations as if they were statutory rules within the meaning of section one of that Act.

Power of Secretary of State to make regulations. 56 & 57 Vict. c. 66.

3. Where in any proceedings against a person charged with an offence under this Act, it is proved that an offence under this Act has been committed, but that the person charged with the offence—

Cases where vendors purchase under warranty.

(a) purchased the textile fabric in respect of which the offence was committed from a person resident within (*a*) the United Kingdom who sold the textile fabric under a warranty that it complied with the prescribed standard of non-inflammability; and

(b) took reasonable steps to ascertain, and did in fact believe in the accuracy of the statement contained in the warranty;

the person so charged shall be entitled upon an information duly laid by him to have the person who gave the warranty brought before the court, and that person may be summarily convicted of the offence, and the person originally charged shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, also be liable to pay any costs incidental to the proceedings.

4. Where a person is charged with having textile fabric in his possession in contravention of this Act, any such material proved in the proceedings to have been found in his possession shall be deemed to be intended for sale as aforesaid unless the contrary is proved.

Material found in possession deemed to be for sale.

(*y*) On Jan. 20, 1914, the Home Secretary made the following regulations under this section:—1. A textile fabric shall be deemed to conform to the standard of non-inflammability if, when tested in accordance with the prescribed method of testing, it is not set alight, or, if set alight, burns without a flame or with a flame which does not spread but converges and dies out. 2. The prescribed method of testing shall be as follows:—A sample of the fabric measuring not less than one square yard shall be taken, and, after it has been four times in succession thoroughly washed with soap and water, dried and ironed, shall be suspended vertically without folds or creases and so that the lower edge shall not be a selvedge or a folded edge. The flame of a wax taper not less than $\frac{1}{8}$ inch or more than $\frac{3}{16}$ inch. in thickness shall then be brought in contact with the fabric at its lower edge and shall be kept in contact for not less than twelve or more than fifteen seconds.

(*a*) If the fabric is purchased from a person outside the United Kingdom, the purchaser must take all responsibility for it.

Powers and duties of local authorities.

5.—(1) It shall be the duty of every local authority to enforce the provisions of this Act within their district, and for that purpose any male or female person or officer whom the local authority may appoint shall have power, if so authorised by the local authority, to institute and carry on any proceedings which the local authority is authorised to institute and carry on under this Act.

(2) In this Act the expression "local authority" means—

as respects the city of London the common council;

as respects any municipal borough, the council of the borough;

as respects any urban district, the district council;

elsewhere, the county council:

Provided that the London County Council may, with the approval of the Secretary of State, make arrangements with the council of any metropolitan borough for the exercise by the metropolitan borough as agents for the London County Council, on such terms and subject to such conditions as may be agreed on, of any powers of the London County Council under this Act within the district of the metropolitan borough, and the council of the metropolitan borough may, as part of the agreement, undertake to pay the whole or any part of the expense incurred in connection with the exercise of the powers delegated to them.

(3) The expenses of a local authority under this Act shall be defrayed,—

in the case of the common council of the city of London, out of the general rate;

in the case of the council of a borough, out of the borough fund or borough rate;

in the case of a district council, as part of the general expenses incurred in the execution of the Public Health Acts;

in the case of a county council, as expenses for special county purposes;

in the case of a metropolitan borough council, as part of the expenses of the council.

Fines imposed to be paid to local authorities.

6. All fines imposed in any proceedings instituted by a local authority in pursuance of their powers and duties under this Act shall be paid to the local authority and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed.

7. 8. [*Scotland ; Ireland.*]

Short title and commencement of Act.

9. This Act may be cited as the Fabrics (Misdescription) Act, 1913, and shall come into operation on the first day of January nineteen hundred and fourteen.

THE ANCIENT MONUMENTS CONSOLIDATION AND AMENDMENT ACT, 1913.

(3 & 4 GEO. 5, c. 32.)

Miscellaneous.

Relaxation of byelaws.

18. Where it appears to the council of a borough or a district, which expression in this Act shall include the Common Council of the City of London, that the erection of buildings of a style of architecture in harmony with other buildings of artistic merit existing in the locality is impeded in consequence of any byelaws (*b*) with respect to new streets or buildings in force in the borough or district, the council may, with the consent of the Local Government Board, relax the byelaws so far as may be necessary to allow the erection

(*b*) As to such byelaws, see the P. H. A., 1875, ss. 157 *et seq.*, *ante*, pp. 324 *et seq.*

of such buildings, provided that the council is satisfied that such buildings can be erected with due regard to safety from fire and to sanitation: Provided also that no byelaws in force in the city of London shall be relaxed under this section except such as are administered by the Common Council of the city of London.

19. The Advertisements Regulation Act, 1907 (*c*), shall be construed as if the powers of the local authority as defined by that Act included a power to make byelaws prohibiting or restricting the display of advertisements or notices of such a nature or in such a manner as to be detrimental to the amenities of any ancient monument specified in the byelaw. Any power to make byelaws given by this section shall be in addition to, and not in derogation of, the powers to make byelaws given by the Advertisements Regulation Act, 1907, or by any other Act.

Power of councils to make byelaws regulating advertisements.

Edw. 7, c. 27.

(*c*) See this Act, *ante*, p. 2077.

APPENDIX II.

COMPRISING ORDERS, ETC., OF THE LOCAL GOVERNMENT BOARD AND OTHER DOCUMENTS ARRANGED IN ALPHABETICAL ORDER OF SUBJECTS.

ACCOUNTS AND AUDIT.

Although by section 58 of the L. G. A., 1894 (*ante*, p. 1044), it is (amongst other things) enacted that the accounts of district councils shall be made up in such form as the L. G. B. prescribe, the Board have not prescribed any such form since the commencement of that Act. They stated, however, in a circular dated December 24th, 1894, that, pending the issue of an Order for Accounts, rural district councils should keep their accounts in the form adopted by rural sanitary authorities. As regards the accounts of urban district councils, the Editors have deemed it advisable under the circumstances to set out the body of the General Order of March 22nd, 1880, with the accompanying Circular, as to the accounts of local boards (*a*), omitting the forms, which can be procured, in a shape revised for present practical use, from the publishers of this Work.

ACCOUNTS OF LOCAL BOARDS (*a*)—CIRCULAR.

Local Government Board, Whitehall, S.W.
March 22nd, 1880.

Sir,—I am directed by the Local Government Board to forward to you herewith three copies of an Order which they have issued under section 245 of the Public Health Act, 1875 (*b*), and section 3 of the District Auditors Act, 1879 (*c*), prescribing regulations with respect to the accounts of local boards and their officers.

The only explanatory observations which the Board think it necessary to make relate to those portions of the Order headed—

Local Board's Accounts;
Surveyor's Accounts;
Accounts of Collectors and other Officers; and
Financial Statement.

The books and accounts included under the first heading are, a minute book (such book, for the purpose of accounts, being regarded as a journal), a ledger, a highway repairs expenditure account, and an order check book.

Having regard to section 189 of the Public Health Act, 1875 (*d*), the Board have left it to the local board to give directions as to the particular officer by whom these books and accounts are to be kept. The Order, moreover, contains no provision for the examination, except by the district auditor, of these or any of the other accounts prescribed. In this respect also, it rests with the local board to make such regulations as they may think proper.

(*a*) A similar Order as to the accounts of Improvement Commissioners was issued on March 8th, 1881. As, except for one variation (see note (*l*), *post*, p. 2170), it is identical *mutatis mutandis* with the Order as to Local Boards, it is not printed here.
(*b*) *Ante*, p. 539.
(*c*) *Ante*, p. 1689.
(*d*) *Ante*, p. 446.

Appendix II.

The arrangement as regards the ledger follows that set forth in the instructional letter issued by the Secretary of State for the Home Department in the year 1864, subject to such alterations in the headings as appeared to be necessary, and the introduction of additional accounts with reference to loans. The experience of the Board has shown the importance of having all transactions under this head recorded in greater detail, and they have accordingly required a separate series of accounts to be kept as regards each loan.

The Highway Repairs Expenditure Account is requisite for the purposes of section 13 of the Highways and Locomotives (Amendment) Act, 1878 (*e*). Under that section the local board, as the highway authority, are to be repaid by the county authority one-half of the "expenses incurred in the maintenance" of main roads, or, following the construction in the last paragraph of that section, "the cost of repairs defrayed out of current rates." All expenditure for "repairs" must therefore be shown separately from other highway expenditure, and the account now in question is limited to repairs only.

The Board have regarded the provision in section 13 which relates to repayment by the county authority as intended to apply to expenses incurred in actual repairs of main roads, and not to include the salary of the surveyor, or such other charges as are incurred in common for the whole of the roads in the district. Such charges could, for the purposes of the section, be only dealt with by way of estimate or apportionment, for which the Board are unable to find any sufficient authority.

The Highway Repairs Expenditure Account is arranged according to the headings under which such expenditure has usually been classified, viz.:—Manual Labour, Team Labour, Materials, Tradesmen's Bills and Miscellaneous. Experience having shown, however, that considerable difference of opinion had prevailed among highway authorities as to the precise items to be included under those headings, particularly as regards "Manual Labour" and "Materials," the Board, in their orders for accounts issued last year to highway boards and parish surveyors, gave such definitions as appeared to them to be clear and comprehensive, and these, with the necessary modifications, have been reproduced in Article 25 of the present Order.

Under the heads of Manual Labour, Team Labour, and Materials, columns are introduced to show the particulars of work performed or materials supplied under contracts.

It may here be convenient to point out that under Article 25 of the Order, contracts of a *general* nature are to be dealt with under the Head of Manual Labour, and that it is only when they are entered into for a specific class of repairs, such as materials or team labour exclusively, that they are to be dealt with under either of the latter heads.

Under all of the four headings, the column for "Amounts Paid" is subdivided, so as to show the portions expended respectively on the repairs of main roads and other roads.

The surveyor's accounts comprise a wages account, a stores account, and (in cases where that officer receives or pays any money on behalf of the local board) a cash account and a general receipt check book.

The wages book is intended to show all payments made to labourers, whatever the description of the work may be on which they are employed, but as the entries in this book will be the basis of the highway repairs expenditure account, the wages in respect of highway repairs are to be shown in separate columns under the three headings, Manual Labour, Team Labour, and Materials, with the subdivision in each case of Main Roads and other roads.

Under the division "Accounts of Collectors and other Officers," provision is made in the Order for the following books and accounts (amongst others):—a rate collection account, a rate receipt check book, and a collecting and deposit account.

The Order does not specify any form of rate, as this is subject to the discretion

(*e*) *Ante*, p. 1674. As to the expenses of maintenance of main roads, see now s. 11 of the L. G. A. 1888, *ante*, p. 736.

Appendix II. of the local board under section 222 of the Public Health Act, 1875 (*f*). The "Rate Collection Account," which contains detailed particulars in regard to the collection, may be combined in one book with the rate, or may be kept in a separate book. The Board are aware that in many cases the rate book is entered up by the clerk, and not by the collector, and they have made provision in the Order for this arrangement where it may appear to the local board to be preferable.

As regards the rate receipt check book, the present Order does not, like the other Orders issued by the Board with respect to rates, contain regulations as to the mode in which the receipts are to be prepared, nor does it require demand notes to be used. It rests with the local board themselves to make such regulations in these respects as may seem to them most advisable.

The Collecting and Deposit Account is not confined to rates, but is intended to include moneys received by the collector from other sources.

The accounts which the Board have prescribed as regards the collector have reference mainly to his responsibility to the district auditor. Under section 195, paragraph 1, of the Public Health Act, 1875 (*g*), it devolves on the local board to prescribe when and in what manner the accounts of moneys received and paid by any of their officers for the purposes of that Act shall be made out to the local board, and paragraph 2 of that section provides for payment to the treasurer of moneys so received, and empowers the local board to make their own arrangements as regards the delivery of lists of persons whose rates are unpaid. The Board have accordingly omitted in the present Order the usual provisions in those respects.

The financial statement (*h*) prescribed by the present Order includes the totals of the receipts and expenditure of the local board as a burial board, where they act in the latter capacity, the details of such receipts and expenditure being shown in a separate statement. The Board have, therefore, issued an Order (two copies of which are enclosed) rescinding to the extent therein specified the Order relating to the Financial Statements of Local Boards, dated the 29th of April last.

It will be seen that all accounts must be made up and balanced to the 25th of March in every year (*i*).

I am, Sir, your obedient servant,

JOHN LAMBERT, *Secretary.*

To the Clerk to the Board.

ACCOUNTS OF LOCAL BOARDS (*k*)—GENERAL ORDER.

(March 22nd, 1880.)

TO THE LOCAL BOARDS, for the time being, of the several Local Government Districts in England and Wales; To the District Auditors within whose Districts the said Local Government Districts are, for the time being, respectively included; And to all others whom it may concern.

WHEREAS by section 245 of the Public Health Act, 1875 [*the section* (*see* ante, *p.* 539) *is here recited*].

And whereas by section 5 of the District Auditors Act, 1879 [*the section* (*see* ante, *p.* 1690) *is here recited*].

And whereas local boards for local government districts are local authorities within the meaning of the sections above cited :

(*f*) *Ante*, p. 503.
(*g*) *Ante*, p. 460.
(*h*) See note to Article 24, *post*, p. 2174.
(*i*) See s. 245 of the P. H. A., 1875, *ante*, p. 539, and s. 58 of the L. G. A., 1894, *ante*, p. 1044.
(*k*) See note (*i*), *ante*, p. 2166.

Now, therefore, we, the Local Government Board, in pursuance of the powers given to us by the statutes in that behalf, hereby order as follows :— **Appendix II.**

ART. 1. The several regulations in this Order contained shall, from and after the twenty-fifth day of March, one thousand eight hundred and eighty, be observed in regard to the accounts of the local board, for the time being, of every local government district in England and Wales, and of their Officers, and in regard to the audit of such accounts, except in so far as the Local Government Board may from time to time assent to any departure from such regulations.

Closing of accounts.

ART. 2. All the accounts of the local board and their officers shall be made up and balanced to the twenty-fifth day of March in every year.

Local board's accounts.

ART. 3. The clerk or other officer duly authorised by the local board shall enter from time to time at proper dates in the *Minute Book* of the local board, according to the Form (A.) in the schedule to this Order, a statement of all orders drawn on the treasurer, and of all moneys paid or received on behalf of the local board, and of all minutes relating to the allocation or division of charges, or any other pecuniary transactions of the local board, and shall insert marginal notes of reference to the respective folios of the ledger in which the items relating to any of such orders, payments, receipts, or other pecuniary transactions are entered.

ART. 4. The clerk or other officer duly authorised by the local board shall accurately and punctually enter up and keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this Order and in the schedule thereto, namely :

(1) *A Ledger*, in the Form (B.), in which the items contained in the minute book of the various transactions relating to the receipt or payment of moneys in respect of the district, or of any part thereof, shall be entered and posted up according to their proper dates, under the following heads of subordinate accounts (or as many thereof as may be necessary), and such additional heads as may be or may from time to time become necessary, viz. :—

Subordinate Accounts of Public Works :

Sewerage.
Water Supply.
Gas Supply.
Repairs of Highways (Main Roads).
Repairs of Highways (other Roads).
Scavenging.
Watering.
Street Works and Improvements.
Baths and Washhouses.
Market Places.
Slaughter Houses.
Pleasure Grounds.
Hospitals.
Sale of Surplus Lands.

Subordinate Accounts of Private Works :

Drainage.
Water Supply.
Street Works.

Subordinate Accounts of a General Character :

Salaries of Officers.
Establishment Charges, other than Salaries.
Elections.
Surveys and Plans.
Legal Expenses.
Compensations.
Collector's Account.
Surveyor's Account.
Treasurer's Account.
School Attendance Committee Account.
Invoice Account, or Tradesmen's Account.

And with reference to every loan obtained by the local board, there shall be kept in the ledger separate accounts under the following heads, so far as the same are applicable to the loan :—

The treasurer, in respect of his receipts and payments on account of the loan.
The lender, in respect of the advance and repayment of the loan, and of the payment of the interest thereon.
The permanent works for which the loan is obtained.
The instalments.
The interest on the loan.
The sinking fund.

Appendix II.

At the end of every year, or oftener, if directed by the local board, the expenditure so entered under the foregoing subordinate accounts shall be allocated or divided under the directions of the local board amongst the following chief accounts, or such others as may be deemed necessary, viz. :—

District Fund Account.
General District Rate Account.
Private Improvement Rate or Expenses Account.
Water Rate Account.
Highway Rate Account.

At the end of every half year a balance sheet or general balance account shall be duly entered in the ledger (*l*).

In connection with the several items in each of the accounts mentioned in No. (1) of this Article, the respective dates of the transactions shall be inserted, together with references to the folios of the minute book in which the entries relating to such transactions are contained, and to the folios of the corresponding debits and credits respectively.

(2) *A Highway Repairs Expenditure Account*, in the Form (C.), in which shall be entered weekly (or at such other periods as the local board may direct), under the four following headings :—

1. Manual Labour ;
2. Team Labour ;
3. Materials ;
4. Tradesmen's Bills and Miscellaneous ;

the particulars of the payments made for repairs of the highways, according to the arrangement of the columns under each of those headings, the payments being shown separately as regards main roads and other roads in the columns provided for that purpose.

(3) *An Order Check Book*, in the Form (D.), which shall contain all orders given by the local board for stores, or other articles, for repairs, or for work, and counterfoils of such orders, and forms of the invoices to accompany commodities supplied, or to be delivered when work is done. Such orders, when duly signed by the clerk or other officer duly authorised, together with the forms of invoice, shall be detached from the said book, and issued to the tradesmen or other persons dealt with or employed, to be returned and disposed of in the manner directed in the Form ; and the counterfoils, duly signed, shall be retained in the said book.

Treasurer's account.

ART. 5. The treasurer of the local board shall keep an account according to the Form (E.) in the said schedule, in which shall be entered punctually and accurately all moneys received and paid by him on behalf of the local board. He shall balance and sign this account quarterly, or at such other times as may be directed by the local board.

Surveyor's accounts.

ART. 6. The surveyor shall accurately and punctually enter up the following accounts, according to the forms and directions relating to such accounts respectively in this Order and the schedule thereto, namely :—

(1) *A Wages Account* in the Form (F.), in which shall be entered the names of the labourers employed by the local board, the days on which, as well as the places at and the work on which they were so employed, the rate of pay, and the amount of wages earned, together with the date of payment.

This account shall also distinguish, as regards repairs of the highways, the amounts in respect of main roads from those in respect of other roads, under the following divisions :—

1. Manual Labour.
2. Team Labour.
3. Materials.

If the local board deem it more convenient, this form may be kept in separate sheets, instead of in a book, and each sheet may, if the local board

(*l*) In Improvement Act districts, under the General Order for Accounts, March 8th, 1881 (see note (*a*), *ante*, p. 2166), the corresponding balance sheet was only required to be entered in the ledger at the end of every year.

so direct, be arranged so as to contain such particulars only as relate to a specific description of work, whether in respect of highways or otherwise.

The surveyor shall, at the time of payment, obtain the signatures of the labourers in the column provided for that purpose, or if any of them are unable to write, they shall affix their marks, which shall be duly attested in acknowledgment of the receipt of the money.

The surveyor shall also sign his name in the place provided for that purpose at the foot of the form.

Provided that where, under the directions of the local board, the wages of the labourers are paid by the clerk or other officer, instead of the surveyor, the above requirements in regard to entering the date of payment and obtaining the labourers' signatures or marks, shall not apply to the surveyor, but shall apply to the clerk or other officer as aforesaid.

(2) *A Stores Account*, in the Form (G.), in which, under separate divisions, according to the directions appended to the form, shall be entered on one side, in order of date, the quantities, prices, and cost of stores received, and on the other side the quantities, prices, and cost of stores expended, as well as the places where and the purposes for which they were expended.

The Stores Account shall be balanced as required by Article 2 and at such other times as the local board may direct.

(3) If the surveyor, under the directions of the local board, receives any money or makes any payments on their behalf, he shall enter such receipts and payments in a *Cash Account*, according to the Form (M.), and use a *General Receipt Check Book*, according to the Form (L.).

Accounts of collectors and other officers.

ART. 7. In the case of every rate which may be levied by the local board, there shall be kept, either in the same book with the rate, or in a separate book, a *Rate Collection Account*, which account shall be in the Form (H.) in the schedule to this Order, or in a form to the like effect, and shall be accurately and punctually entered up every week by the collector, in accordance with the directions appended to the said form, and shall be duly signed by him when balanced.

Provided that where the said *Rate Collection Account* is kept in the same book as the rate, the columns headed "Number of Assessment" and "Amount of Rate at in the Pound" may be omitted from the form.

Provided also, that if the local board deem it advisable that the *Rate Collection Account* should be kept by their clerk, such account may be kept and signed by the clerk accordingly, instead of by the collector.

The *Rate Collection Account* shall be balanced as required by Article 2, and if the rate to which it relates is closed at any other time than the 25th day of March, then also at such closing of the rate.

ART. 8. The collector shall keep a *Collecting and Deposit Account*, in the Form (I.), in which shall be entered accurately, and under their true dates, all sums received by him as such collector or paid over by him to the treasurer of the local board.

ART. 9. The collector shall, in the collection of every rate, use a *Rate Receipt Check Book*, in the Form (K.) in the said schedule, or in such other form as the local board may direct, applicable to one or to several rates as they may think fit. The receipts and counterfoils in this book shall be numbered consecutively according to the numbers or assessments in the rate book.

When the amount of the rate shall be received from any person assessed, the receipt applicable to such person's assessment shall, at that time, and not before, be signed by the collector and detached from the Rate Receipt Check Book, and shall be delivered, stamped with an adhesive stamp, where the amount of the payment shall render such stamp necessary, to the person making the payment, and the counterfoil, duly filled up, shall be retained in the book. In the receipt so delivered, and in the counterfoil so retained, the true date of the payment shall be inserted.

If upon the closing of any rate not fully collected there shall remain in the Rate Receipt Check Book any receipts made out for such rates unused, the collector shall enter upon each of such receipts the reason for not using it, and date and sign such entry.

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ART. 10. Whenever money is received by the collector otherwise than in respect of rates, or by the clerk or other officer, on behalf of the local board, he shall duly fill up one of the receipts and counterfoils in the *General Receipt Check Book,* Form (L.), and shall deliver the receipt (stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary) to the person making the payment, and shall retain the counterfoil in the book. Such receipts and counterfoils shall bear corresponding numbers in consecutive order.

ART. 11. If the clerk, or any other officer except the treasurer and collector, shall, under the directions of the local board, receive or pay moneys on their behalf, he shall keep a *cash account,* according to the Form (M.) in the schedule to this Order, and such account shall be balanced at such times as the local board may direct.

Audit.

ART. 12. The district auditor shall audit the accounts of the local board and their officers once in every year, that is to say, as soon as may be after the twenty-fifth day of March. Provided always, that if the district auditor shall be required by the Local Government Board to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit, all the provisions herein contained with reference to the ordinary audit shall, so far as they may be applicable, apply to such extraordinary audit.

ART. 13. The clerk and the other officers of the local board who by law are liable to account to the district auditor shall attend at the time and place appointed by him for the audit of their accounts, and shall submit to him all books and accounts which they are respectively required to keep by this or any other order of the Local Government Board, or by the local board, together with all documents and vouchers containing or relating to such books or accounts ; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer interested in such accounts, but to such extent and in such manner only as will not, in the judgment of the said district auditor, interfere with the audit.

ART. 14. In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority. He shall ascertain whether all sums received, or which ought to have been received, are brought into account, and shall examine whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant ; shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss ; and shall disallow and strike out such payments as are not authorised by law.

ART. 15. When the district auditor disallows any payment or surcharges any sum upon any person he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit, and shall report such disallowance or surcharge to the Local Government Board (*m*).

ART. 16. The district auditor shall examine and collate the several books and papers of account ; and shall ascertain that the several entries correspond with and balance each other, where such balance may be required ; but in case of any error caused by inadvertence or accident in any account he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the account so corrected. But if the officer shall refuse to do so, the district

(*m*) As to appeals to the L. G. B. by members and officers of local authorities against disallowances and surcharges by a district auditor, see Instructions, dated April, 1905, *post*, p. 2186. As to the time when a surcharge should be made see *R.* v. *Local Government Board, Ex parte Warren* (1909), 73 J. P. 186 ; 100 L. T. 434.

auditor shall himself make the correction, and report the circumstances of the case to the Local Government Board. **Appendix II.**

ART. 17. The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall state the balance in words at length, and certify the same by his signature or initials, and add the date of the audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificates and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

ART. 18. The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same; and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge (*n*).

ART. 19. If the district auditor shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels, relating to the local government district, to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person as may then appear, and such accounts, books and papers as may be produced before him, respecting such account, item, or charge.

ART. 20. If the district auditor find that any money, goods, or chattels belonging to the local board, have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such surcharge to the local board as soon as he conveniently can do so.

ART. 21. The personal representatives of an officer accountable under this Order, dying before the audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

ART. 22. The district auditor having audited the several accounts in the ledger, shall sign a certificate at the foot of the balance sheet therein, to the following effect:—

> "I have examined the several accounts of which the foregoing is the balance sheet, and I have compared the several payments credited to the treasurer with the vouchers, and I hereby certify that the entries appear to be correct and legal. And that [when the balance in the account kept by the treasurer does not agree with the balance in the ledger], subject to the explanation below [the difference to be explained at the foot of the certificate], the balance of the treasurer's account herein, viz., £ , agrees with the balance which by his own account appears to have been in his hands at the time of closing such account.
>
> "Dated
>
> "(Signed)
>
> "District Auditor."

And in the other books the district auditor shall enter a certificate of his having audited the same, and sign and date the same.

(*n*) See *R.* v. *Local Government Board*, noted on p. 2172, *ante*, note (*m*).

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ART. 23. The district auditor shall, at the close of each audit, transmit to the Local Government Board a statement in the Form (R.) in the said schedule, showing which of the books and accounts directed by this Order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Local Government Board.

Financial statement.

ART. 24. The financial statement required to be prepared and submitted to the district auditor in duplicate by the local board, in accordance with the provisions of section 3 of the District Auditors Act, 1879, shall be in the Form (O.) in the schedule of this Order, and shall contain the particulars therein specified or referred to; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement (*o*).

Interpretation of terms.

ART. 25. In this Order and in the forms set forth in the schedule thereto, the term—

"Clerk" means the clerk to the local board.

"District auditor" means the auditor for the time being in whose district the local government district is included.

"Rate," unless otherwise expressed, means any rate or assessment which may be made by the local board under the provisions of the Public Health Act, 1875.

"Surveyor" means a surveyor appointed by the local board under the provisions of section 189 of the Public Health Act, 1875, and includes an assistant surveyor, where such an assistant is appointed under those provisions, and where he may be required by the local board to perform any of the duties herein prescribed.

"Main roads" means roads so constituted under the Highways and Locomotives (Amendment) Act, 1878.

"Manual labour" means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs, and includes contract work for repairs, where such repairs are let by contract, and where the contract is not made exclusively for the purposes hereinafter described under either of the heads of "team labour" or "materials."

"Team labour" means labour of that kind employed in the collection, delivery, or distribution of materials for the purpose of executing repairs, and includes such labour employed under any contract entered into for those purposes exclusively.

"Materials" means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into for those purposes exclusively as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

"Tradesmen's bills" includes the cost of tools, implements, and other stock supplied by tradesmen for repairs, and not hereinbefore included in the term "materials," and the cost incurred in repairs of drains, bridges, and fences, executed by tradesmen; and when used in connection with "main roads" means tradesmen's bills for repairs incurred for main roads exclusively.

Given under the Seal of Office of the Local Government Board, this twenty-second day of March, in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

(*o*) This Article was rescinded by an Order, dated April 19th, 1884, by which a fresh form of financial statement was prescribed. In consequence, however, of the provisions of the L. G. A., 1888, that Order has, in its turn, been rescinded (except in so far as it rescinded this Article), and a still newer form of financial statement is now in force for urban district councils prescribed by an Order dated April 18th, 1903, *post*, p. 2178.

MEMORANDUM OF INSTRUCTIONS IN REGARD TO THE FINANCIAL STATEMENTS OF LOCAL BOARDS AND IMPROVEMENT COMMISSIONERS. Appendix II.

Receipts.

1. *General District Rate.*—In cases where the local authority act as a burial board, and any portion of their expenses as such is defrayed out of the general district rate, care should be taken to exclude the amount of general district rate received by them as a Burial Board from the amount of the receipt from general district rate on page 4 of the statement, as directed by the footnote on that page.

2. The *rate in the £* of each of the various rates should always be entered in the space provided for that purpose.

3. *Waterworks, Gasworks, Markets and Fairs, etc.*—The receipts in respect of these undertakings should be distributed under the heads specified in the form.

4. *Other Local Authorities.*—Receipts from other local authorities should be entered under the heading " From other Local Authorities " on page 6 of the statement, whether or not the sums are received on account of works or purposes which are elsewhere specified. For example, sums received from another local authority for water in bulk should be entered under this head and not under the head of " Waterworks." It will, however, be convenient that the undertaking or purpose in respect of which the sum is received should be specified in a note. The local authorities referred to are the authorities required to make returns under the Local Taxation Returns Acts.

5. *Other Receipts.*—Items, such as sums received from private individuals for work performed, rents for the use of town halls and offices, sales of property, etc., which might properly be entered under any of the specific headings provided in the form, should not be returned as " Other Receipts." Neither should the interest received on uninvested sinking funds be included under the general head " From other Sources," but opposite the item " Dividends on Sinking Funds," with a brief note indicating the precise nature of the receipt.

6. *Penalties and other Receipts belonging to the District Fund and not previously included.*—It will be convenient for statistical purposes if sums received as penalties, fines and fees only, and no other receipts, are entered under this head.

7. *Receipts from Loans.*—Receipts from loans should always be entered under the headings provided for that special purpose in the form, and where a loan has been raised for more than one purpose under more than one sanction, the items indicating the purposes for which the loan has been raised should not be bracketed together, but the amount received for each object should be separately shown.

8. Only principal sums received by means of loans raised under legal authority should appear under the head of " Receipts from Loans." Receipts from the sale of surplus materials purchased out of loans, or interest on unexpended balances of loans, should not be entered as " Receipts from Loans."

9. *Rateable Value and Assessable Value of the District.*—Care should be taken that the amount of the rateable value of the district according to the poor rate and its assessable value according to the general district rate are duly stated, and that the deductions provided for by section 211 of the Public Health Act, 1875, have been made from the rateable value in order to arrive at the correct amount of the assessable value according to the general district rate.

Expenditure.

10. *Sewage Disposal Works.*—The cost of emptying ashpits and cesspools, etc., should not be entered under this head, but under that of " Other Public Works or Purposes."

11. *Highways.*—The expense incurred in the scavenging and watering of highways repairable by the inhabitants at large should appear under the heading "Highways," and not under the head of "Other Public Works or Purposes."

12. *Other Public Works or Purposes.*—No expenditure, whether of an ordinary or exceptional character, should be entered under this head if the purpose for which it was incurred is indicated by a heading specified in the form.

13. *Establishment Charges.*—The cost of books, printing, stationery, postage, and office expenses, and rates and taxes on offices, should be included under this head.

14. *In respect of Loans—Principal repaid.*—All sums repaid in respect of principal (except repayments out of borrowed money) should appear under this head, but no payment into a sinking fund should be entered as "principal repaid." *See also* paragraph 17.

15. *In respect of Loans—Interest.*—The amount actually paid during the year for interest on loans, whether as "interest less income tax" to the lender, or in the shape of "income tax on interest charged for loans" paid to the income-tax collector, should appear under this head and in the appropriate column of the Loan Account.

The deduction of income tax from the amount of interest due should in no case be entered as a receipt, but the actual payments made during the year for interest and for income tax on interest should be regarded as payments for "interest in respect of loans," irrespective of the fact that in some instances the payment in the form of income tax would be made in respect of the interest charged in the accounts of a previous year.

16. Though sanitary authorities have no legal power to pay interest on temporary loans or on overdrawn balances, as a matter of fact such payments are occasionally made, and where made should be entered in the financial statements, not as interest on loans, but under the head of "Other Payments," the amount disallowed in respect of such payments being subsequently deducted on page 10.

17. *In respect of Loans—Sinking Fund.*—It is important that as to this item the following rules should be followed in every case, viz.:—

(a) Under this head should be inserted all sums which have been actually expended in investments whether authorised or unauthorised, but only such sums.

(b) Sums expended during the year in repayment of principal out of moneys which have been set apart but not invested should appear in the financial statement once only, *i.e.*, as "principal repaid," and the withdrawal of such sums from the fund set apart should not be treated as receipts.

(c) Any uninvested sinking fund which has not been applied in repayment of principal will in the financial statement go to swell the amount appearing in the treasurer's hands.

18. *Expenditure out of Loans.*—Payments from any other source made in anticipation of a loan received during the financial year in which the expenditure has been defrayed should appear once only in the statement, viz., as an expenditure out of loan. When amounts are entered in the statement as expended out of loan before the loan has been actually received, but steps have been taken to raise the loan, the entry of such as expenditure out of loan may be permitted, a note being appended to the effect that the money was spent in anticipation of a loan about to be raised.

19. In cases, however, in which expenditure has been incurred on account of purposes for which the local authority may intend to borrow money, but in respect of which they have not, at the date of the audit, taken any steps to raise the loan, the amount should be entered in the financial statement as expenditure other than out of loans. If in such a case a loan is subsequently

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raised the amount applied from it to recoup general account should be entered as expenditure out of loan under the heading " Other Purposes " as a recoupment of the general account. It should also be entered on page 6 under " Other Receipts," with a reference to the item of expenditure.

20. When an unexpended balance of loan is returned to the lender, the amount should appear as expenditure out of loan under the head of " Other Purposes."

Local authority acting as a burial board.

21. *Receipts from General District Rates.*—Care should be taken when the local authority act as a Burial Board, and any part of their expenses are paid out of the general district rate, to observe the instruction contained in the first note on page 4 of the financial statement with regard to the amount received from the general district rate in respect of Burial Board expenses.

22. *Receipts from Sales of Graves, Vaults, etc. Receipts from Burial Fees.*—These two items should not be bracketed together, with only one amount entered as received from the two sources. The receipt under each head should always be separately shown.

23. *Expenses in respect of Burial Grounds and Buildings.*—No sums expended by the Burial Board which may properly be entered under this head should be returned as " Establishment Charges " or " Other Payments."

24. *Salaries.*—Salaries of officers of the local authority engaged also on work connected with the functions of the authority as a Burial Board, and other items of expenditure common to both purposes, may properly be apportioned between the expenditure for the purposes respectively of the local authority and the Burial Board, and the proportionate amounts in the different parts of the financial statement accordingly.

25. *Establishment Charges other than Salaries.*—The cost of books, printing, stationery, postage, and office expenses, and rates and taxes on offices should be included under this head.

Loan account

26. In some cases discrepancies have been observed between the amounts entered as being in the sinking funds and the amounts which should be in the funds, having regard to the amounts shown by the previous loan account as being in the funds at the end of the preceding year, and allowing for the subsequent payments into and out of the funds. It is very desirable that where loans are repayable by means of sinking funds, only such an amount should be entered as repaid out of sinking fund during the year as has been actually provided for either during the year or previously by a sinking fund and has been paid out of the fund. Any sums which were paid from other sources should not be entered as having been paid from sinking fund, but should be entered in column 10 for " Amounts paid this year not including payments to, or repayments out of Sinking Fund."

27. Loans are sometimes temporarily repaid out of current rates pending re-borrowings, whilst, on the other hand, sums are re-borrowed and not devoted to the repayment of loans prior to the end of the year. These transactions have the effect of reducing or increasing temporarily the amount of the outstanding loans as entered in the loan account. In all these cases it has been necessary to communicate with the authority in order to ascertain the true facts of the case. Explanatory notes should be appended to the loan account in all cases where the outstanding balance of loan has been temporarily increased or temporarily reduced in the manner above adverted to,—the amount of the increase or decrease being clearly stated in such notes.

28. It is important that the loan account should be so prepared as to enable the Board to easily ascertain the amount of loans outstanding in respect of each purpose. With this view the entries in the loan account should be grouped according to the purposes for which the loans were raised ; *e.g.*, all loans for waterworks or water supply should appear on succeeding lines, to be followed by those for gas works, for street improvements, private improvements, etc., etc.

Appendix II. 29. The precise object for which the loans were obtained should be clearly described, and loans for private improvements should invariably be described as such, and not as loans for "street improvements, sewerage," etc.

30. The information required by the heading of every column in the loan account applicable to the particular item should be inserted, and in any instance where the local authority have no loan transactions to return in the loan account the word "Nil" should be written thereon, and such "Nil" account should be signed by the clerk and certified by the auditor.

General observations.

31. It will be understood that these instructions refer exclusively to the financial statements, and have no reference to entries in the ledger of the authority.

32. The statement is intended for, and should be strictly confined to, receipts and payments of moneys and cash balances, and with regard to materials purchased it is not the cost of the quantity used but the amount actually paid during the year which for the purposes of the financial statement is to be included in the statement for that period. It is, however, very desirable that stores bought and paid for, but not used during the year, should be appropriated where in any way practicable to the class or classes of works for which they have been purchased, but care must be taken not to bring the values of balances in hand of such stores at the end of one year into the following year's statement as "receipts."

33. Where part of the accounts of a local authority is not subject to audit by the district auditor (as sometimes in the case of gas works, tramways, or cemetery accounts, kept pursuant to a local Act under which the necessary funds were raised) the financial statement should not contain any items relating to such part of the accounts. It will be convenient that the fact that such part of the accounts has been excluded should be stated in a note.

34. The amount of cheques drawn which should be included in the financial statement is the amount of those which have actually been credited to the treasurer in the ledger, and issued by the authority before the termination of the year.

35. The responsibility of affixing the necessary stamp or stamps rests with the local authority, and it is not desirable that the auditor should undertake the duty on behalf of the authority. The stamped financial statement and the duplicate should be certified on the same day and bear the same date. Neither duplicate should be signed until one has been duly stamped.

HUGH OWEN, *Secretary.*

Local Government Board,
7th October, 1887.

FINANCIAL STATEMENT (STATUTORY)—URBAN DISTRICT COUNCILS.

(April 18th, 1903.)

To THE URBAN DISTRICT COUNCIL of every Urban District in England and Wales which is not a borough; to the District Auditors for the time being authorised to audit the accounts of the said Urban District Councils respectively; and to all others whom it may concern.

WHEREAS by section 3 of the District Auditors Act, 1879 [*the section* (*see* ante, *p.* 1689) *is here recited*].

And whereas urban district councils are local authorities within the terms of the said section.

And whereas by sub-sections (1) and (2) of section 58 of the L. G. A. 1894 [*the sub-sections* (*see* ante, *p.* 1044) *are recited*].

And whereas it is expedient that the financial statement required to be prepared and submitted as aforesaid by the urban district council of every urban district in England and Wales which is not a borough should be in the form set forth in the schedule to this Order: **Appendix II.**

Now therefore, we, the Local Government Board, hereby order and prescribe as follows with respect to the urban district council of each urban district in England and Wales, which is not a borough; that is to say,—

Subject to any departure to which we may hereafter assent, or to any direction which we may hereafter give, the financial statement to be prepared and submitted to the district auditor in duplicate by the urban district council in accordance with the provisions of section 3 of the District Auditors Act, 1879, above recited, for the year ended on the thirty-first day of March, one thousand nine hundred and three, and for each succeeding year, shall, until we otherwise prescribe, be in the form in the schedule to this Order.

The financial statement shall contain the particulars specified or referred to in the said form, so far as they are applicable; and the certificate of the district auditor to be appended to each duplicate shall be in the form set forth at the foot of Part IV. of the said statement.

* * * * *

Given under the Seal of Office of the Local Government Board, this Eighteenth day of April, in the year One thousand nine hundred and three.

(L.S.) WALTER H. LONG, *President.*

S. B. PROVIS, *Secretary.*

ACCOUNTS OF RURAL DISTRICT COUNCILS—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.
July 26th, 1895.

SIR,—I am directed by the Local Government Board to advert to section 58 of the Local Government Act, 1894 (*p*), which directs that the accounts of rural district councils, and of their committees and officers, shall be made up to the 31st day of March in each year, and that they shall be audited by a district auditor. The enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, are made applicable accordingly.

The enactments referred to will be found in sections 247 and 250 of the Public Health Act, 1875 (*q*). The Board are, however, empowered by sub-section (3) of section 58 of the Local Government Act, 1894, to make rules with respect to the audit of the accounts of rural district councils modifying these enactments in certain particulars.

The Board have accordingly issued an Order (*r*), two copies of which are enclosed, making rules modifying sub-section (10) of section 247 of the Public Health Act, 1875, in relation to the audit of the accounts of rural district councils. The effect of these rules will be that it will not be requisite that the auditor should report to the rural district council on their accounts. It will, however, be the duty of the rural district council on the completion of the audit to publish an abstract of their accounts in some one or more of the local newspapers circulated in their district.

With regard to the deposit of the accounts, the Board may draw attention to sub-section (4) of section 247 of the Public Health Act, 1875, which requires that a copy of the accounts duly made up and balanced, together with all account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts shall be deposited in the office of the rural district council, and be open during office hours to the inspection of all persons interested for seven clear days before the audit, and all such persons will be

(*p*) *Ante*, p. 1044.
(*q*) *Ante*, pp. 541, 550.
(*r*) Dated May 20th, 1895, and set out *post*, p. 2181.

Appendix II. at liberty to take copies of or extracts from the documents referred to without fee or reward.

It may be convenient to mention that under sub-section (3) of section 247 of the Public Health Act, 1875, it will be the duty of the rural district council, after receiving from the auditor the requisite appointment of the audit, to give at least fourteen days' notice of the time and place of audit, and of the deposit of accounts required by the section, by advertisement, in some one or more of the local newspapers circulated in the district, and that the production of the newspaper containing such notice will be deemed to be sufficient proof of such notice on any proceeding whatsoever.

Under section 3 of the District Auditors Act, 1879 (*s*), it is requisite that the rural district council should prepare and submit to the auditor at the audit a financial statement in duplicate, in a form prescribed by the Board, and the Board have issued a further Order (*t*) prescribing a form of financial statement of the receipts and payments of rural district councils for the period from the appointed day under the Local Government Act, 1894, up to March 31st last. Two copies of the order are enclosed.

For the purpose of preservation and reference, it is desirable that financial statements should be uniform, and the Board therefore request that the form of statement used may be on foolscap paper of the usual size.

The District Auditors Act, 1879, provides that there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty, according to a scale based upon the amount of the expenditure included in the financial statement.

The following is the scale of stamp duties prescribed by the Act :—

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under £20	5*s*.
£20 and under £50	10*s*.
£50 and under £100	£1
£100 and under £500	£2
£500 and under £1,000	£3
£1,000 and under £2,500	£4
£2,500 and under £5,000	£5
£5,000 and under £10,000	£10
£10,000 and under £20,000	£20
£20,000 and under £50,000	£25
£50,000 and under £100,000	£30
£100,000 and upwards	£50

The stamp must be affixed to or impressed upon the financial statement, and the Commissioners of Inland Revenue have provided adhesive stamps bearing the words "district audit," representing the value of 5*s*., 10*s*., £1, £2, and £5 ; and such stamps will be supplied on application to any distributor or sub-distributor of stamps.

The Commissioners require that where the duty exceeds £5 it should be denoted by an impressed stamp, and any financial statement liable to duty above this amount will, on being presented to any distributor or sub-distributor, be forwarded by him, free of expense, to the Inland Revenue Department, in order that it may be impressed with the required stamp.

Where any doubt is felt as to the amount of expenditure upon which the stamp is to be assessed, the affixing of the stamp may be postponed until the question has been submitted to the district auditor and determined by him.

I am, Sir, your obedient servant,

HUGH OWEN, *Secretary.*

To the Clerk to the Rural District Council.

(*s*) *Ante*, p. 1689.

(*t*) Dated July 25th, 1895, but, being of a temporary character only, this Order is not set out in this Work.

Appendix II.

AUDIT OF ACCOUNTS (RURAL DISTRICT COUNCILS, Etc.)—GENERAL ORDER.

(May 20th, 1895.)

To the Rural District Council of every Rural District in England and Wales; To the Parish Council of every Parish in England and Wales having a Parish Council; To the Parish Meeting of every Rural Parish in England and Wales not having a Parish Council; To any Joint Committee of any such Parish Councils and Parish Meetings; And to all others whom it may concern.

Whereas by [*sub-sections* (2) *and* (3) *of section* 58 *of the L. G. A.*, 1894 (*see* ante, *p.* 1045), *are recited*].

And whereas we deem it expedient that the enactments last referred to should, for the purposes of the audit of the accounts of parish and rural district councils and parish meetings, be modified as hereinafter mentioned:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our Order, direct that, unless we shall otherwise direct, the following Rules shall have effect:—

Publication of Notice of Audit of Accounts of Parish Councils and Parish Meetings (*u*).

* * * * *

Report of District Auditor on Accounts of Rural District Councils, Parish Councils, Parish Meetings, and Publication of Abstract of Accounts of Rural District Councils.

2. In the application of sub-section (10) of section 247 of the Public Health Act, 1875 (*x*), to the audit of the accounts of rural district councils, parish councils, and parish meetings, such sub-section shall be modified so as to read as follows:—

"(10) Within fourteen days after the completion of the audit, the auditor shall send to the Local Government Board a report on the accounts audited and examined by him. Every rural district council shall, on the completion of the audit, publish an abstract of their accounts in some one or more of the local newspapers circulated in their district, and every parish council shall submit to the parish meeting held in the parish next after the completion of the audit a copy of the financial statement of the accounts of such council as certified by the district auditor."

Joint Committees of Parish Councils and Parish Meetings (*u*).

* * * * *

Given under the Seal of Office of the Local Government Board, this twentieth day of May, in the year one thousand eight hundred and ninety-five.

(L.S.) G. Shaw-Lefevre, *President*.

S. B. Provis, *Assistant Secretary*.

(*u*) This part of this Order not concerning sanitary authorities, is therefore omitted.
(*x*) *Ante*, p. 543.

Appendix II.

FINANCIAL STATEMENT (STATUTORY)—RURAL DISTRICT COUNCILS.

(October 4th, 1899.)

TO THE RURAL DISTRICT COUNCIL of every Rural District in England and Wales; To the District Auditors for the time being authorised to audit the Accounts of the said Rural District Councils respectively; And to all others whom it may concern.

WHEREAS by sub-sections (1) and (2) of section 58 of the L. G. A., 1894 [*the sub-sections* (*see* ante, *p.* 1044) *are recited*].

And whereas by section 3 of the District Auditors Act, 1879 [*the section* (*see* ante, *p.* 1689) *is recited.*]

And whereas a rural district council are a local authority within the terms of the last-cited section:

Now, therefore, we hereby order and prescribe as follows with respect to each rural district council in England and Wales, but subject to any departure which may hereafter be assented to by us:—

The financial statement to be prepared and submitted to the district auditor in duplicate by the rural district council as a local authority, in accordance with the provisions of section 3 of the District Auditors Act, 1879, above recited, for the period ending on the thirty-first day of March in any year subsequent to the present year, shall, until we otherwise prescribe, be in the form in the schedule to this order, and, for the period ending on the thirtieth day of September in any year, shall, until we otherwise prescribe, be in the said form, with the exception of so much as is contained in Part IV. thereof.

The financial statement shall contain the particulars specified or referred to, so far as they are applicable; and the certificate of the district auditor to be appended to each duplicate shall be in the form set forth at the foot of Part III. of the said statement.

* * * * *

Given under the Seal of Office of the Local Government Board, this Fourth day of October, in the year One thousand eight hundred and ninety-nine.

(L.S.) HENRY CHAPLIN, *President.*

H. C. MONRO, *Assistant Secretary.*

ACCOUNTS OF JOINT COMMITTEES OF DISTRICT COUNCILS, ETC.—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.
July 29*th*, 1895.

SIR,—I am directed by the Local Government Board to advert to section 58 of the Local Government Act, 1894 (*y*), which directs that the accounts of parish and district councils and of parish meetings for parishes not having parish councils, and of their committees and officers shall be made up to the 31st day of March in each year, and that, except in the case of accounts audited by the auditors of a borough (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council), they shall be audited by a district auditor. The enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential

(*y*) *Ante*, p. 1044.

thereon, are made applicable accordingly, except that, in the case of the accounts of rural district councils and of their committees and officers, the audit is to be half-yearly instead of yearly.

Joint committees appointed by district councils or by district councils and parish councils or parish meetings, including a joint committee appointed by a borough council with another council not being a borough council, are committees within the meaning of section 58 of the Local Government Act, 1894, and the enactments referred to are applicable to such joint committees.

The enactments above referred to will be found in sections 247 and 250 of the Public Health Act, 1875 (*a*). The Board are, however, empowered by sub-section (3) of section 58 of the Local Government Act, 1894, to make rules with respect to any audit to which that section applies modifying the enactments so far as they relate to publication of notice of the audit and of the abstract of accounts and the report of the auditor.

The Board have accordingly issued an Order (*b*), two copies of which are enclosed, making rules modifying sub-section (3) of section 247 of the Public Health Act, 1875, in relation to the audit of the accounts of joint committees of the kind above referred to. The effect of these rules will be that it will be the duty of the clerk to the joint committee, after receiving the requisite notice of the appointment of the audit from the auditor, to give, either by posting or by advertisement in one or more local newspapers circulated within the district, at least fourteen days' notice of the time and place at which the audit will be commenced, and of the deposit of the accounts required by the section; and, on such notice being given, to forward to the auditor a certificate to this effect in a form prescribed by the Board.

If the notice is given by posting, the form of the notice and the manner in which it is posted must under the Order be such as the Board shall have prescribed. The Board have accordingly issued a further Order (*c*) prescribing the form of notice and directing that the notice shall be posted on or near to the principal door of each church or chapel in the district in respect of which the committee shall have been appointed and in some conspicuous place or places in such district. This Order also prescribes two forms of certificate to be sent to the auditor; the form prescribed by Article III. of the Order will be used when the notice has been given by posting, and that prescribed by Article IV. when the notice has been given by advertisement. Two copies of the Order are enclosed.

With regard to the deposit of the accounts, the Board may draw attention to sub-section (4) of section 247 of the Public Health Act, 1875, which requires that a copy of the accounts duly made up and balanced, together with all account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts, shall be deposited in some place which for this purpose must be deemed to be the office of the joint committee, and be open during office hours to the inspection of all persons interested for seven clear days before the audit. All such persons will be at liberty to take copies of or extracts from the documents referred to without fee or reward.

Under section 3 of the District Auditors Act, 1879 (*d*), it is requisite that the joint committee should prepare and submit to the auditor at the audit a financial statement in duplicate, in a form prescribed by the Board, and the Board have by the Order last referred to prescribed the necessary form for the period up to the 31st March last.

For the purpose of preservation and reference, it is desirable that financial statements shall be uniform, and the Board therefore request that the form of statement used may be on foolscap paper of the usual size.

The District Auditors Act, 1879, provides that there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty, according to a scale based upon the amount of the expenditure included in the financial statement.

(*a*) *Ante*, pp. 541, 550.
(*b*) Dated July 26th, 1895, and set out *post*, p. 2185.
(*c*) This Order being of a temporary character only, is not set out in this Appendix.
(*d*) *Ante*, p. 1689.

Appendix II. The following is the scale of stamp duties prescribed by the Act:—

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under £20	5*s.*
£20 and under £50	10*s.*
£50 and under £100	£1
£100 and under £500	£2
£500 and under £1,000	£3
£1,000 and under £2,500	£4
£2,500 and under £5,000	£5
£5,000 and under £10,000	£10
£10,000 and under £20,000	£15
£20,000 and under £50,000	£20
£50,000 and under £100,000	£30
£100,000 and upwards	£50

The stamp must be affixed to or impressed upon the financial statement, and the Commissioners of Inland Revenue have provided adhesive stamps, bearing the words "District Audit," representing the value of 5*s.*, 10*s.*, £1, £2, and £5, and such stamps will be supplied on application to any distributor or sub-distributor of stamps.

The Commissioners require that where the duty exceeds £5 it should be denoted by an impressed stamp, and any financial statement liable to duty above this amount will, on being presented to any distributor or sub-distributor, be forwarded by him, free of expense, to the Inland Revenue Department, in order that it may be impressed with the required stamp.

Where any doubt is felt as to the amount of expenditure upon which the stamp is to be assessed, the affixing of the stamp may be postponed until the question has been submitted to the district auditor and determined by him.

The Board have also, by their first-mentioned Order, modified the provisions contained in sub-section (10) of section 247 of the Public Health Act, 1875, in their application to joint committees of the kind mentioned in the Order. It will not be necessary that the auditor should report to the joint committee on their accounts, or that the joint committee should publish an abstract of the accounts in a local newspaper; but the joint committee must submit to the authorities by whom they have been appointed at the meeting of the authorities respectively held next after the completion of the audit a copy of the financial statement of the accounts of the joint committee, as certified by the district auditor.

The Board have no definite information as to the cases in which joint committees have been appointed under the Local Government Act, 1894. If, therefore, the council had appointed members of any such committee before the 31st March last, the Board would be obliged if you would forward to such committee a copy of each of the enclosed Orders and of this circular, and if you would also be so good as to inform the Board of the name of the committee, the purpose for which it was formed, the councils or parish meetings represented on the committee, and the name and address of the clerk.

I am, Sir, your obedient servant,

HUGH OWEN, *Secretary.*

To the Town Clerk, or
The Clerk to the Urban District Council, or
The Clerk to the Rural District Council.

Appendix II.

AUDIT OF ACCOUNTS (JOINT COMMITTEES)—GENERAL ORDER.

(July 26th, 1895.)

TO THE URBAN DISTRICT COUNCIL of every Urban District in England and Wales; To the Rural District Council of every Rural District in England and Wales; To the Parish Council of every Parish in England and Wales having a Parish Council; To the Parish Meeting of every Rural Parish in England and Wales not having a Parish Council; To any Joint Committee of any such Councils and Parish Meetings as aforesaid; And to all others whom it may concern.

WHEREAS by [*sub-sections* (2) *and* (3) *of section* 58 *of the L. G. A.*, 1894 (*see* ante, *p.* 1045), *are recited*].

And whereas we deem it expedient that the enactments last referred to should, for the purposes of the audit of the accounts of any joint committee, as defined by this Order, be modified as hereinafter mentioned:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our Order, direct that unless we shall otherwise direct, the following rules shall have effect:—

Publication of notice of audit of accounts of joint committees.

1. In the application of sub-section (3) of section 247 of the Public Health Act, 1875 (*e*), to the audit of the accounts of any joint committee as defined by this Order, such sub-section shall be modified so as to read as follows:—

"(3) Before each audit of the accounts of a joint committee of district councils, or of a joint committee of a district council or district councils and a parish council or parish meeting or parish councils or parish meetings (including the accounts of a joint committee appointed by a borough council with another council not being a borough council), the clerk of the joint committee shall, after receiving from the auditor the requisite notice of the appointment, give at least fourteen days' notice of the time and place at which the audit will be commenced, and of the deposit of the accounts required by this section, either by causing notices in the prescribed form to be posted in the prescribed manner, or by advertisement in some one or more of the local newspapers circulated in the district for which the joint committee is appointed. He shall, immediately after such notice is posted or such advertisement is published, as the case may be, forward to the auditor a certificate thereof in the prescribed form, and the production of such certificate or of the newspaper containing the advertisement shall be deemed to be sufficient proof in any proceeding whatsoever of the notice required by this section having been given.

"The term 'prescribed' in this section means prescribed by the Local Government Board."

Report of district auditor on accounts of any joint committee.

2. In the application of sub-section (10) of section 247 of the Public Health Act, 1875 (*f*), to the audit of the accounts of any joint committee as defined by this Order, such sub-section shall be modified so as to read as follows:—

"(10) Within fourteen days after the completion of the audit, the auditor shall send to the Local Government Board a report on the accounts audited and examined by him. Every joint committee shall, on the completion of the audit, submit to the several authorities by whom they have been appointed at the meeting of such authorities respectively held next after the completion of the audit a copy of the financial statement of the accounts of the joint committee as certified by the district auditor."

(*e*) *Ante*, p. 541. (*f*) *Ante*, p. 543.

Appendix II.

Interpretation.

3. In this Order the expression "joint committee" means a joint committee of district councils or of any district council and parish council or parish meeting, inclusive of a joint committee appointed by a borough council with another council not being a borough council.

Given under the seal of Office of the Local Government Board, this twenty-sixth day of July, one thousand eight hundred and ninety-five.

(L.S.) HENRY CHAPLIN, *President.*

HUGH OWEN, *Secretary.*

PURCHASE OF PERIODICAL PUBLICATIONS—MEMORANDUM.

MEMORANDUM AS TO THE LEGALITY OF EXPENSES INCURRED BY LOCAL AUTHORITIES IN PURCHASING PERIODICAL PUBLICATIONS.

The Local Government Board have recently had under consideration the question of the legality of the purchase by local authorities, at the cost of the funds under their control, of periodical publications which contain reports of decisions of the courts of law, or other information connected with matters subject to their jurisdiction.

Hitherto the Board have generally considered that the local rates could not legally be expended in the purchase of the publications referred to.

Recently, however, they have seen reason to doubt whether this view could be supported, and they have therefore consulted the law officers of the Crown upon the point. The effect of the opinion given by the law officers is, that if the publications referred to contain information so immediately connected with the discharge of their duties by the local authorities as to be likely to enable them to discharge those duties more efficiently than they could without such publications, the local authorities may legally make the purchase at the cost of the rates.

The Board think it desirable to communicate this opinion to the auditors for their future guidance. It will of course be for the auditor, subject to appeal to the Board, to decide, in regard to any particular publication, whether it does or does not contain information of the character described; and he should satisfy himself, with reference to the special circumstances of each case, that not more copies of any periodical are purchased than are reasonably necessary.

HUGH OWEN, *Secretary.*

Local Government Board, Whitehall,
June 16*th*, 1884.

INSTRUCTIONS AS TO THE MODE OF APPEALING TO THE LOCAL GOVERNMENT BOARD AGAINST DISALLOWANCES AND SURCHARGES BY A DISTRICT AUDITOR.

1. Any person affected by a district auditor's certificate of disallowance or surcharge, may, if he feels aggrieved by the auditor's decision, appeal to the Local Government Board, who, upon the receipt of the appeal, are empowered to decide as to the lawfulness of the reasons stated by the auditor for his decision; and where they uphold the disallowance or surcharge, they may, upon payment of the costs (if any) incurred by the auditor in taking steps to enforce payment of the money certified, remit the disallowance or surcharge, if they consider that the subject-matter of it was incurred under such circumstances as make it fair and equitable that this course should be taken.

2. Any person desiring to appeal, must, unless the auditor has already entered his reasons in the book of account in which the disallowance or surcharge was made, apply to him to enter his reasons in that book; and for this purpose the book should be submitted to him.

3. When the auditor has entered his reasons, an exact copy of them and also a copy of his certificate of disallowance or surcharge, including his signature and the date of the entry, should be forwarded to the Board with the appeal. **Appendix II.**

4. The appeal should be by letter on foolscap paper, addressed to the Secretary of the Local Government Board, Whitehall, London, and must be signed by the appellant in his own handwriting. *Where two or more persons are mentioned in the auditor's certificate, the appeal should be signed by each of those desirous of appealing.*

5. The appeal should contain a full statement of the facts which the appellant may desire to lay before the Board; and the grounds upon which the appeal is made should be explicitly set out. If there are any

(1) Cheques,
(2) Bills,
(3) Vouchers, or
(4) Other papers or documents

bearing upon the matter, they should be forwarded to the Board with the appeal; and where there are resolutions of the local authority with reference to the subject-matter of the expenditure, copies of the resolutions should also be sent.

6. Unless an appeal be made against the auditor's decision, the sum certified by him to be due must be paid over as follows:—

(a) Money certified to be due in the accounts (including accounts of committees and officers) of a

(1) *County Council*, or
(2) *Visiting Committee of a Lunatic Asylum*, or
(3) *Metropolitan Borough Council*, or
(4) *Town Council*, or
(5) *District Council*, or
(6) *Port Sanitary Authority*, or
(7) *Parish Council* or *Parish Meeting*, or
(8) any other authority to whom section 247 (9) of the Public Health Act, 1875, applies,

must be paid *within fourteen days* from the date of the auditor's certificate, to the treasurer of the authority; or in the case of a parish council or parish meeting having no treasurer, to the person or persons who receive money on their behalf.

(b) Money certified to be due in the accounts (including the accounts of officers) of a

(1) *Board of Guardians*, or
(2) *Board of Management* for a Poor Law School or Asylum District,

must be paid over *within seven days* to the treasurer of the authority.

(c) Money certified to be due in the accounts of Overseers, Assistant Overseers, or Collectors, relating to the under-mentioned rates, must be paid over *within seven days*, as hereinafter mentioned, except where the sum, or the aggregate of the sums, disallowed is less than £2, in which case the money may be paid over with the balance (if any) to the succeeding Overseers:—

(1) Money certified in the *Poor Rate* accounts must be paid to the *Treasurer of the Guardians:*
(2) Money certified in the *separate Sanitary Rate* account must be paid to the *Treasurer of the Rural District Council:*
(3) Money certified in the *Lighting Rate* account or *separate Burial Rate* account must be paid to the treasurer of the authority on whose precept or certificate the rate was made.

The reference to officers in paragraph 6 (a) above applies to the managers of any public elementary school to whom any receipts or payments of money under the Education Act, 1902, are entrusted by the Local Education Authority—see section 18 (5) of the Act.

S. B. PROVIS, *Secretary.*

Local Government Board,
April, 1905.

ALLOTMENTS.

See "SMALL HOLDINGS AND ALLOTMENTS," *post*, p. 2529.

ALTERATION OF AREAS.

INQUIRIES AND NOTICES UNDER SECTION 57 OF THE LOCAL GOVERNMENT ACT, 1888—REGULATIONS.

(September 14th, 1889, as amended June 28th, 1910.)

TO THE COUNTY COUNCILS for the several Administrative Counties in England and Wales; And to all others whom it may concern.

WHEREAS [*sub-sections* (1), (2) *and* (3) *of section* 57 *of the L. G. A.*, 1888 (ante, *p.* 769), *and s.* 87 (4) *of that Act* (ante, *p.* 781) *are recited*].

And whereas in regard to the matters required by the said section 87 to be prescribed no provision other than that contained in the said section 87 is made, declaring how such matters are to be prescribed:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this Order, and until we shall otherwise direct, prescribe and determine as follows, with respect to the inquiries to be made and the notices to be given for the purposes of the said section 57 of the Local Government Act, 1888, the manner of giving such notices, and the several other matters to be prescribed and determined for the purposes of the said section; that is to say,—

ART. 1.—(1) Prior to any order being made by a county council in regard to a proposal for all or any of the things specified in sub-section (1) of section 57 of the Local Government Act, 1888, a local inquiry, at which all persons interested may attend and be heard, shall be held in regard to the proposal as the council may direct, either by a committee of the county council, or by some person appointed by the county council to hold such inquiry.

(2) If the proposal relate to one or more county districts, the said inquiry shall be held at some convenient place in such district or in one of such districts; and if the proposal relate to a parish or parishes, the said inquiry shall be held either in such parish or in one of such parishes, or at such place in the neighbourhood as may, in the opinion of the committee or person by whom the inquiry is to be held, be most convenient for the purpose.

(3) Before the day when the inquiry is to be held, public notice of the purport of the proposal, and of the day, time, and place fixed for the inquiry in regard to it, shall be given by the county council by advertisement in two successive weeks in some local newspaper circulating in the locality to which the proposal relates.

ART. 2. At least fourteen days before the day when the inquiry is to be held, a printed notice of the purport of the proposal, and of the day, time, and place for the inquiry shall also be published in the manner hereinafter described, and shall be sent to the several government departments and local or other authorities hereinafter specified; that is to say,—

(1) A copy of the said notice shall be posted as a bill or placard in such places in the county district or districts or parish or parishes interested in the proposal as are ordinarily made use of for posting public or parochial notices.

(2) In any case where the proposal relates to the alteration of or other dealing with any sanitary district, a copy of the notice shall be sent by the county council to the sanitary authority of such district.

(3) In any case where the proposal relates to the alteration of or other dealing with any parish a copy of the notice shall be sent by the county council to the overseers of the poor of such parish; to the guardians of the poor of the union in which such parish is comprised; to the school

board (if any) for such parish or for any part thereof ; to the highway authority or authorities of the parish ; to the burial board (if any) for such parish or for any part thereof ; and to the urban sanitary authority (if any) in whose district such parish or any part thereof is comprised.

(4) A copy of the notice shall be sent by the county council to any local authority which, in the opinion of the county council, is specially interested in the proposal.

(5) A copy of every such notice shall be sent by the county council to the Local Government Board and to the Registrar-General ; and in any case where the proposal relates to all or any of the things mentioned in paragraphs (a), (b), and (c) of sub-section (1) of section 57 of the said Act, a copy of the notice shall be sent by the county council to the Public Works Loan Commissioners, and to the Director-General of the Ordnance Survey at Southampton ; and in any case where the proposal relates to the alteration or definition of the boundary of any parish a copy of the notice shall be sent to the Board of Education (*g*).

ART. 3. Public notice of the provisions of any Order made by a county council under sub-section (1) of section 57 of the said Act shall be given by the county council by advertisement in two successive weeks in some local newspaper circulating in each district or parish affected by the Order ; and the first of such advertisements shall be published within fourteen days after the making of the Order.

The said advertisement shall contain either a copy of the Order or a statement of the effect of the Order, and shall also contain a statement of the time and place or places during and at which copies of the Order may be inspected by any owner or ratepayer in any area affected by the Order during a period of one month from the date of the first publication of such advertisement, and the Order shall be open for such inspection during such period.

ART. 4. A copy of any Order made as aforesaid by a county council shall, at any time while copies of the Order are open to inspection as aforesaid, and, in the case of an Order which requires to be confirmed by the Local Government Board, at any time before the confirmation of the Order by the Local Government Board, be supplied by the clerk to the council to any owner or ratepayer in any area affected by the Order, upon payment by such owner or ratepayer of a sum not exceeding threepence for each hundred words of manuscript if the copy of the Order be in writing, or upon payment of a sum not exceeding threepence for a printed copy of the Order.

ART. 5. On or before the date of the first publication of the advertisement in pursuance of Article 3 hereof of the provisions of any Order made as aforesaid, and, in the case of any such Order which does not require to be confirmed by the Local Government Board, one month at least before the Order is finally approved by the county council under the said sub-section (2) of section 57 of the said Act, three copies of the Order shall be forwarded to the Local Government Board and to each of the other Government Departments to whom a copy of the notice of the inquiry relative to the proposed Order was, by Article 2 of this Order, required to be sent ; a copy of the Order shall also be sent to each of the local or other authorities to whom a copy of such notice was so required to be sent, and a copy shall also be posted in like manner as the notice of the inquiry was, in pursuance of the same Article, required to be posted.

ART. 6. The first advertisement in pursuance of Article 3 hereof of the provisions of any order made by a county council under the said sub-section (1) of section 57 of the said Act shall be deemed to be the " first notice " for the purposes of sub-section (3) of that section.

ART. 7. The expression " county council " in this Order shall include a joint committee appointed under section 81 of the said Act by any county

(*g*) This paragraph is printed as amended by later Regulations of June 28th, 1910

Appendix II. councils of administrative counties for the purpose of dealing under section 57 of the said Act with a matter in which such councils are jointly interested.

Given under the Seal of Office of the Local Government Board, this fourteenth day of September, in the year one thousand eight hundred and eighty-nine.

(L.S.) CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

LOCAL GOVERNMENT (INQUIRIES AND NOTICES) COUNTY BOROUGHS ORDER, 1902.

To THE MAYOR, ALDERMEN, AND BURGESSES of the several County Boroughs in England and Wales; To THE COUNTY COUNCILS of the several Administrative Counties in England and Wales; And to all others whom it may concern.

WHEREAS by sub-sections (1), (2) and (3) of section 57 of the L. G. A., 1888 [*the sub-sections* (ante, *p.* 769) *are recited*].

And whereas in pursuance of section 34 of the said Act, the mayor, aldermen, and burgesses of each county borough, acting by the council, have and are subject to such of the powers, duties, and liabilities of a county council under the said section 57 of the said Act as relate to parishes.

And whereas by sub-section (4) of section 87 of the said Act [*the sub-section* (*see* ante, *p.* 781) *is recited*].

And whereas in regard to the matters required by the said section 57 to be prescribed no provision other than that contained in the said section 87 is made declaring how such matters are to be prescribed.

And whereas [*sections* 36 (11), 41 *and* 75 *of the L. G. A.*, 1894 (ante, *pp.* 1019, 1020, 1056), *are recited*].

And whereas by divers special Orders, we, the Local Government Board, have made regulations under the hereinbefore recited enactments with respect to certain county boroughs and the councils of such county boroughs and the said Orders are still in force:

Now therefore, in pursuance of the powers given to us in that behalf, we do hereby rescind all the Orders issued by us prescribing regulations as to inquiries and notices under the hereinbefore recited enactments in regard to any county borough and the council of any county borough:

Provided that nothing in this Order shall affect the validity of any proceedings which may have been taken or commenced prior to the date hereof under any Order hereby rescinded.

And we do by this our Order, unless and until we shall otherwise direct, prescribe and determine as follows, so far as regards any county borough and the council of any county borough, with respect to the inquiries to be made and the notices to be given for the purposes of section 57 of the Local Government Act, 1888, the manner of giving such notices, and the several other matters to be prescribed and determined for the purposes of the said section; that is to say,—

ART. 1.—(1) A local inquiry, at which all persons interested may attend and be heard, shall, prior to any Order being made by the council under section 57 of the Local Government Act, 1888, be held in regard to the proposal, either by a committee of the council or by some person appointed by the council to hold such inquiry, as the council may direct.

(2) The said inquiry shall, unless the council otherwise determine, be held at some convenient place in the parish, or in one of the parishes, proposed to be dealt with, or at such other place in the borough or neighbourhood as may, in the opinion of the committee or person by whom the inquiry is to be held, be most convenient for the purpose.

(3) At least ten days before the day when the inquiry is to be held, public notice of the purport of the proposal, and of the day, time, and place fixed for

the inquiry in regard to it, shall be given by the council by advertisement in some local newspaper circulating in the locality to which the proposal relates. **Appendix II.**

ART. 2. At least ten days before the day when any such local inquiry is to be held, a printed notice of the purport of the proposal, and of the day, time, and place, for the inquiry shall also be published in the manner hereinafter prescribed, and shall be sent to the several Government departments and local or other authorities hereinafter specified; that is to say,—

(1) A copy of the said notice shall be posted as a bill or placard in such places in the parish or parishes interested in the proposal as are ordinarily made use of for posting public or parochial notices.

(2) A copy of the notice shall be sent by the council to the overseers of the poor of each parish interested in the proposal; to the guardians of the poor of the poor law union in which such parish is comprised or of which such parish consists; to the school board (if any) in whose district such parish or any part thereof is comprised; and to any burial board or body, other than the council, exercising the powers of a burial board, for such parish or for any part thereof.

(3) A copy of the notice shall be sent by the council to any local authority which, in the opinion of the council, is specially interested in the proposal.

(4) A copy of every such notice shall be sent by the council to the Local Government Board, the Board of Education, the Board of Agriculture, the Public Works Loan Commissioners, the Director-General of the Ordnance Survey at Southampton, and the Registrar-General, and, where any parish comprised in the Metropolitan Police District is concerned, to the Receiver for the Metropolitan Police District.

ART. 3.—(1) Public notice of the provisions of any Order made by the council under section 57 of the Local Government Act, 1888, shall be given by the council by advertisement in some local newspaper circulating in each parish interested in the proposal; and such advertisement shall be published within ten days after the making of the Order.

(2) The said advertisement shall contain either a copy of the Order, or a statement of the effect of the Order, and shall also contain a statement of the time and place or places during and at which copies of the Order may be inspected by any owner or ratepayer in any area affected by the Order during a period of fourteen days from the date of the publication of such advertisement, and the Order shall be open for such inspection during such period.

ART. 4. A copy of any Order made by the council as aforesaid shall, at any time before the expiration of six weeks from the publication of the advertisement in pursuance of Article 3 (1) hereof, be supplied by the clerk of the council to any owner or ratepayer in any area affected by the Order upon payment by such owner or ratepayer of a sum not exceeding threepence for each hundred words of manuscript if the copy of the Order be in writing, or upon payment of a sum not exceeding threepence for a printed copy of the Order.

ART. 5. On or before the date of the publication in pursuance of Article 3 (1) hereof of the advertisement of the provisions of any Order made as aforesaid three copies of the Order shall be forwarded to the Local Government Board and to each of the other Government departments to whom a copy of the notice of the inquiry relative to the proposed Order is, by Article 2 hereof, required to be sent; a copy of the Order shall also be sent to each of the local or other authorities to whom a copy of such notice is so required to be sent, and a copy shall also be posted in like manner as the notice of the inquiry is, in pursuance of the same article, required to be posted.

ART. 6. The advertisement in pursuance of Article 3 (1) hereof of the provisions of any Order made by the council under section 57 of the Local Government Act, 1888, shall be deemed to be the "first notice" for the purposes of sub-section (3) of that section as amended by section 41 of the Local Government Act, 1894.

ART. 7. The expression "council" in this Order shall mean the town council of any county borough, and shall include a joint committee appointed

Appendix II. either by the council and the council of any other county borough or boroughs or by any such council or councils and the county council or councils of any administrative county or counties, for the purpose of dealing with any case or cases in which the council are jointly interested; and, where any such joint committee is appointed reference in this Order to the county borough shall be deemed to refer to the county borough or boroughs and the county or counties interested, and references to the clerk of the council to any person acting as clerk to the joint committee or appointed by such committee to discharge the duties of the clerk of a council under this Order.

ART. 8. This Order may be cited as the "Local Government Acts (Inquiries and Notices) County Boroughs Order, 1902."

Given under the Seal of Office of the Local Government Board, this twenty-ninth day of November, in the year One thousand nine hundred and two.

WALTER H. LONG, *President.*

S. B. PROVIS, *Secretary.*

BILLS IN PARLIAMENT.

BOROUGH FUNDS ACTS, 1872 AND 1903.

[*Ante*, pp. 1566, 2031.]

INSTRUCTIONS TO URBAN DISTRICT COUNCILS.

PROMOTION OF BILLS IN PARLIAMENT.

EVERY application under the Borough Funds Act, 1872, as amended by the Borough Funds Act, 1903, for the approval of the Local Government Board to a resolution of an urban district council in favour of promoting a Bill in Parliament at the expense of any local rate should be accompanied by—

1. A copy of the Bill which is to be promoted.
2. A statement of the grounds of the promotion.
3. A statutory declaration by the chairman or clerk of the district council in the form set forth below, showing that the statutory requirements have been complied with, and having annexed to it the several documents therein referred to. The declaration must be stamped with a half-crown impressed stamp.

Form of Statutory Declaration.

Urban district of

In the matter of the Borough Funds Acts, 1872 and 1903, and the promotion by the district council of the Bill, 19 .

I [*Here state name of declarant and office held by him*] do solemnly and sincerely declare as follows:—

1. On the day of a notice was advertised in the (being a local newspaper published or circulating in the urban district of) of a meeting to be held of the district council of the said district and of the purpose of such meeting.

A copy of the newspaper containing an advertisement of the said notice is annexed hereto, marked A.

2. Such notice was in addition to the ordinary notice required for the summoning of a meeting of the district council.

3. In pursuance of such notice a meeting of the district council was held on the day of , and a resolution was passed by an absolute majority of the whole number of the council, of which resolution a copy is annexed hereto, marked B. The total number of members of the council is , of which number voted for the resolution, voted against the resolution; were present at the meeting, but did not vote, and were absent from the meeting.

4. The said resolution was twice published in the , being a news-

paper circulating in the urban district; viz., the first time on the day of and the second time on the day of . Appendix II.

Copies of the newspapers containing the publication of such resolution are annexed thereto marked respectively C. and D.

5. Notice as to the Bill was given in accordance with the requirements of Rule (1) of the First Schedule to the Borough Funds Act, 1903, by placards and by advertisement in some local newspaper circulating in the urban district in two successive weeks. The first advertisement was made and the placards were posted within the time required by Rule (2) of the said schedule.

A copy of the placard and of each newspaper, viz., the [*Here insert name of newspaper*] dated the day of and the day of are hereto annexed, marked respectively E, F, and G.

6. In accordance with such notice a public meeting of electors was held on the day of [and was adjourned till the day of]. A copy of the resolution [or each of the resolutions] put to the meeting is hereto annexed, marked H [*or* H_1, H_2, H_3, &c.], and the resolution was [*or* resolutions were] passed by the meeting [*or* the resolutions marked were passed and the resolutions marked were rejected by the meeting].

7 (a). No requisition for a poll was delivered to the chairman of the urban district council within the time limited by Rules (9) and (10) of the said schedule.

or 7 (b). A requisition by [electors] / [the urban district council] for a poll was delivered to the chairman of the urban district council within the time limited by Rule [(9)] / Rule [(10)] of the said schedule. A copy of the requisition is hereto annexed, marked J.

8 (a). A poll was rendered unnecessary by the withdrawal of the requisition or by a resolution of the council withdrawing the Bill or the part or parts or clause or clauses of the Bill to which the resolution with reference to which the poll was required related. [*Omit the words not applicable to the case.*]

or 8 (b). On such requisition a poll of the electors was taken by the chairman of the urban district council [*or* by who was appointed in pursuance of Rule (15) of the said schedule] in accordance with the regulations contained in the said schedule and the regulations of the Local Government Board prescribed under Rule (16) thereof.

A copy of the declaration of the result of the poll is hereto annexed marked K.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at in the county of this day of 19 .
Before me

Exhibits to be annexed to the Declaration.

A. Copy of the newspaper containing advertisement of notice of meeting of district council and of the purpose of such meeting.
B. Copy of resolution passed at meeting of council.
C. Copy of newspaper containing the first publication of resolution of council.
D. Copy of newspaper containing the second publication of resolution of council.
E. Copy of placard containing notice as to the Bill.
F. Copy of newspaper containing first advertisement of the notice as to the Bill.
G. Copy of newspaper containing second advertisement of the notice as to the Bill.
H. Copy of each resolution put to the public meeting of electors.
J. Copy of requisition for the poll (if any).
K. Copy of declaration of the result of the poll (if any).

OPPOSITION TO BILLS IN PARLIAMENT.

Every application under the Borough Funds Act, 1872, as amended by the Borough Funds Act, 1903, for the approval of the Local Government Board

Appendix II. to a resolution of an urban district council in favour of opposing a Bill in Parliament at the expense of any local rate should be accompanied by—

1. A copy of the Bill which is to be opposed.

2. A statement of the grounds of the opposition.

3. A statutory declaration by the chairman or clerk of the district council in the form set forth below, showing that the statutory requirements have been complied with, and having annexed to it the several documents therein referred to. The declaration must be stamped with a half-crown impressed stamp.

Form of Statutory Declaration.

Urban district of

In the matter of the Borough Funds Acts, 1872 and 1903, and the opposition by the urban district council to the Bill, 19 .

I [*Here insert name of declarant and office held by him*] do solemnly and sincerely declare as follows :—

1. On the day of a notice was advertised in the (being a local newspaper published or circulating in the urban district of) of a meeting to be held of the district council of the said district and of the purpose of such meeting.

A copy of the newspaper containing an advertisement of the said notice is annexed hereto, marked A.

2. Such notice was in addition to the ordinary notice required for the summoning of a meeting of the district council.

3. In pursuance of such notice a meeting of the district council was held on the day of , and a resolution was passed by an absolute majority of the whole number of the council, of which resolution a copy is annexed hereto, marked B. The total number of members of the council is , of which number voted for the resolution, voted against the resolution ; were present at the meeting but did not vote, and were absent from the meeting.

4. The said resolution was twice published in the , being a newspaper circulating in the urban district ; viz., the first time on the day of and the second time on the day of .

Copies of the newspapers containing the publication of such resolution are annexed hereto, marked respectively C and D.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at in the county of this day of 19 .
Before me

Exhibits to be annexed to the Declaration.

A. Copy of newspaper containing advertisement of notice of meeting of district council and of the purpose of such meeting.
B. Copy of resolution passed at meeting of council.
C. Copy of newspaper containing the first publication of resolution of council.
D. Copy of newspaper containing the second publication of resolution of council.

BOROUGH FUNDS ACTS (POLLS) ORDER, 1903.

To THE COUNCILS of the several Metropolitan Boroughs ; To THE COUNCILS of the several Municipal Boroughs and Urban Districts in England and Wales ; And to all others whom it may concern.

WHEREAS [*sections* 1 *and* 9 *and Schedule* (16) *of the Act of* 1903 (*see* ante, *pp.* 2031, 2034, 2035) *are recited*].

NOW THEREFORE, we, the Local Government Board, in the exercise of our powers in that behalf, and subject to any departure to which we may hereafter assent and to any direction which we may hereafter give, do hereby prescribe, for use under the first schedule to the Act, the several forms which are set

forth in the schedule to this Order and which form the subject-matter of provisions in the regulations contained in this Order and hereinafter referred to as "the regulations," and we do hereby order that the regulations shall apply to and be observed for the purposes of or in connection with every poll under the Act. Appendix II.

THE REGULATIONS.

ART. 1. In the regulations—

The expression "returning officer" means, as the case may be, the mayor of the borough, or the chairman of the urban district council, or the person appointed by the council in accordance with the provisions of the paragraph numbered 15 in the first schedule to the Act. Definition.

ART. 2. Every requisition for a poll by electors shall be in the Form No. 1 in the first schedule to this Order. Requisition for poll by electors.

ART. 3. A requisition for a poll by electors may be withdrawn by a notice delivered to the returning officer not later than the third day before the day fixed for the poll. The notice shall be in the Form No. 2 in the first schedule to this Order. Withdrawal of requisition for poll by electors.

ART. 4. A requisition for a poll by the council may be withdrawn by a resolution of the council, of which resolution a copy shall be delivered to the returning officer not later than the third day fixed for the poll. Withdrawal of requisition for a poll by the council.

ART. 5. Where the council after a requisition for a poll resolve to withdraw the Bill or the part or parts or clause or clauses to which the resolution with reference to which the poll is required relates, a copy of the resolution of the council for such withdrawal shall be delivered to the returning officer not later than the third day before the day fixed for the poll. Withdrawal of bill or part or parts or clause or clauses.

ART. 6. If by the withdrawal of the requisition for a poll or by the withdrawal of the Bill or the part or parts or clause or clauses to which the resolution with reference to which the poll is required relates, a poll is rendered unnecessary, the returning officer shall give public notice stating that no poll will be taken. The notice shall be in the Form No. 3 in the first schedule in this Order. Notice that no poll will be taken.

ART. 7.—(1) The returning officer shall appoint an office in the borough or urban district for the purposes of the poll. Appointment of office and provision of necessaries for purposes of the poll.

(2) The returning officer shall provide such polling stations, boxes, voting papers, stamping instruments, copies of register of parochial electors, and other things, appoint and pay such officers, employ and pay such persons, and do such other acts and things as may be necessary for effectually conducting the poll and for carrying into effect the rules set forth in the second schedule to this Order.

ART. 8.—(1) Every poll shall be held on a day which shall be fixed by the returning officer, and shall be not earlier than the tenth day nor later than the fourteenth day after that on which, as the case may be, the requisition for the poll by electors or a copy of the resolution authorising the requisition for the poll by the council was delivered to the returning officer. Day and hours of poll.

(2) The hours during which the poll shall be open shall be fixed by the returning officer, so, however, that the poll shall always be open between the hours of six and eight in the evening.

ART. 9.—(1) (a) If the borough or urban district is divided into wards for the election of councillors, and a separate list or separate lists of electors will be available for each of those wards, each ward shall be a polling district for the poll. Polling districts.

(b) If the borough or urban district is not so divided, but is divided into polling districts for the election of councillors, and a separate list or separate lists of electors will be available for each of those districts, each district shall be a polling district for the poll.

(c) If neither paragraph (a) nor paragraph (b) of this regulation applies to the borough or urban district, the returning officer may, if he thinks fit,

Appendix II. divide the borough or urban district into polling districts for the poll, but each district shall consist of an area for which a separate list or separate lists of electors will be available.

(2) If the borough or urban district is divided into polling districts for the poll, each elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate.

Polling places and stations.

ART. 10. The returning officer shall determine the number and situation of the polling places and polling stations in a polling district.

Provided as follows :—

(a) No premises licensed for the sale of intoxicating liquor shall be used for a polling station ;

(b) Where the number of electors in the borough or urban district, or (if the borough or urban district is divided into polling districts) in any polling district, is not more than five hundred, only one polling station shall, unless the council otherwise direct, be provided for the borough or urban district or polling district ; and so on for each additional five hundred electors, or for any less number of electors over and above the last five hundred.

Notice of the poll.

ART. 11.—(1) The returning officer, seven clear days at least before the day fixed for a poll, shall give public notice thereof.

The notice shall specify—

(a) the resolution or resolutions as to which the poll is to be taken ;

(b) the day and hours fixed for the poll ;

(c) the situation and allotment of the polling place or polling places, and if there be more than one polling place or polling station, the description of the persons entitled to vote at each polling place and polling station.

(2) The notice shall be in the Form No. 4 in the first schedule to this Order.

Presiding officers.

ART. 12.—(1) The returning officer, or some person appointed by him for the purpose, shall preside at each polling station.

The person presiding at any polling station is hereinafter referred to as the presiding officer.

(2) If the returning officer presides at a polling station the regulations, including the rules set forth in the second schedule to this Order, so far as the regulations and rules relate to a presiding officer, shall, with the necessary modifications, apply to the returning officer in that capacity.

Compartments of polling stations. Voting papers.

ART. 13. The returning officer shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and shall furnish each presiding officer with such number of voting papers as may be necessary for effectually taking the poll.

Questions to elector.

ART. 14.—(1) The presiding officer may, and, if required by any elector, shall put to any elector at the time of his applying for a voting paper, but not afterwards, the following questions, or one of them, and no other :—

(a) Are you the person entered in the parochial register for the parish of   or for the   ward in this borough or urban district as follows [*read the whole entry from the register*] ?

(b) Have you already voted at the present poll ?

(2) A person required to answer either of these questions shall not receive a voting paper or be permitted to vote until he has answered it.

Procedure at poll.

ART. 15.—(1) Each voting paper, which shall be in the Form No. 1 set forth in the third schedule to this Order, shall show every resolution upon which the poll is taken, and shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting the voting paper shall be marked on both sides with an official mark, either stamped or perforated, and shall be delivered to the voter within the polling station, and the number of the voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote

on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the presiding officer, after having shown to him the official mark at the back. Appendix II.

(2) If in the register of parochial electors for a parish, the same number is placed opposite to the name of more than one parochial elector, the returning officer shall put a distinguishing mark on each part of the register which contains numbers used in other parts of the register, and when the number of any voter on any part of the register is entered on the counterfoil of a voting paper, the mark on that part shall also be entered thereon.

(3) After the close of the poll the boxes shall be sealed up, so as to prevent the introduction of additional voting papers, and the returning officer shall take the boxes into his custody, and that officer shall open the boxes and ascertain the result of the poll by counting the votes given for and against each resolution upon which the poll is taken.

ART. 16.—(1) The declaration of the result of the poll shall be in the Form No. 5 in the first schedule to this Order. Declaration of result of poll.

(2) The returning officer making the declaration shall forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted.

(3) The returning officer shall cause public notice to be given of the result of the poll as declared, and shall announce the result to the council.

ART. 17. The poll shall be conducted in accordance with the rules set forth in the second schedule to this Order. Conduct of poll.

ART. 18. Any public notice required by this Order shall be given by posting the same on or near the principal door of each church and chapel in the borough or urban district, and in some conspicuous place or places within the borough or urban district. Publication of notices.

ART. 19. No misnomer or inaccurate description of any person or place named in any notice under this Order shall hinder the full operation of that notice with respect to that person or place, provided the description of that person or place is such as to be commonly understood. Misnomer. Inaccurate description.

ART. 20. This Order may be cited as the "Borough Funds Acts (Polls) Order, 1903." Title of order.

SCHEDULES.

FIRST SCHEDULE.

FORM No. 1.

Form of Requisition of Electors.

We, the undersigned electors of the [Borough] [Urban District] of hereby require a Poll of the electors to be taken with reference to the [resolution] [resolutions] put to the public meeting held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the Bill, intituled a Bill , which has been deposited in Parliament by the council.

Signature of elector.	Address of elector.

Dated this day of , 19 .

Appendix II.

FORM NO. 2.

Notice of Withdrawal of Requisition for Poll by Electors.

WHEREAS by a requisition bearing date the day of , 19 , we, the undersigned electors of the [Borough] [Urban District] of required a Poll of the electors to be taken with reference to the [resolution] [resolutions] put to the public meeting held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the Bill, intituled a Bill , which has been deposited in Parliament by the council.

Notice is hereby given that we, the electors aforesaid, do hereby withdraw the said requisition.

Signature of elector.	Address of elector.

Dated this day of , 19 .

FORM NO. 3.

Notice that no Poll will be taken.

[BOROUGH] [URBAN DISTRICT] OF .
IN PARLIAMENT: SESSION .

(*Title or Short Title of Bill.*)

WHEREAS a requisition was made that a poll of the electors of the above-named [Borough] [Urban District] be taken with reference to the [resolution] [resolutions] put to the public meeting held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the Bill, the title of which is set forth above.

[And whereas the requisition aforesaid has been withdrawn.]

[And whereas the council have withdrawn (part or parts or clause or clauses of) the Bill above referred to.]

I do hereby give notice that the poll for which the said requisition was made will not be taken.

Dated this day of , 19 .

Returning Officer.

FORM NO. 4.

Notice of Poll.

[BOROUGH] [URBAN DISTRICT] OF .
IN PARLIAMENT: SESSION .

(*Title or Short Title of Bill.*)

WHEREAS a requisition has been made that a poll of the electors of the above-named [Borough] [Urban District] be taken with reference to the [resolution] [resolutions] put to the public meeting of electors held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the Bill, the title of which is set forth above, and such [resolution] [resolutions] [was] [were] in the following terms:—

*

NOTICE IS HEREBY GIVEN—

1. That a poll of the electors with reference to the [resolution] [resolutions] above set forth will be taken on day the of , 19 , between the hours of and .

†2.—(1) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2) The polling districts are as follows:—

‡3. The situation and allotment of the polling places and stations and the description of the persons entitled to vote thereat are as follows:—

Dated this day of , 19 .

Returning Officer.

Office for purposes of Poll.

* Here insert the resolution or resolutions as to which the poll is to be taken.

† If the borough or district is not divided into polling districts for the purposes of the poll, paragraph 2 should be omitted.

‡ If only one polling place or station, adapt form accordingly.

FORM No. 5.

Declaration of Result of Poll.

[BOROUGH] [URBAN DISTRICT] OF .
IN PARLIAMENT: SESSION .

(*Title or Short Title of Bill.*)

WHEREAS a poll of the electors of the above-named [Borough] [Urban District] was taken on the day of , 19 , with reference to the following [resolution] [resolutions] put to the public meeting held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the Bill, the title of which is set forth above.

Resolutions.

(1)
(2)

I, the undersigned, being the returning officer at the said poll, do hereby declare that the number of votes recorded thereat is as follows:—

In favour of the Resolution No. 1 . . . . votes.
Against the Resolution No. 1 . . . . votes.

Majority in favour [*or* against *as the case may be*] . . .

In favour of the Resolution No. 2 . . . . votes.
Against the Resolution No. 2 . . . . votes.

Majority in favour [*or* against *as the case may be*] . . .

Dated this day of , 19 .

Returning Officer.

SECOND SCHEDULE.

RULES FOR POLLS.

1. The returning officer shall provide each polling station with materials for voters to mark the voting papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at that station. He shall keep the official mark secret.

2. The returning officer shall cause directions for the guidance of the voter to be printed in conspicuous characters, and placarded outside every polling station and in every compartment of every polling station. Such directions shall be in the Form No. 2 in the third schedule to the Borough Funds Acts (Polls) Order, 1903.

3. The presiding officer appointed to preside at each station shall keep order at his station, and, for that purpose, shall regulate the number of electors to be admitted at a time.

4. Every box for the reception of voting papers shall be so constructed that the voting papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the box empty to such persons, if any, as may be present in the station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking the seal, and shall place it in his view for the receipt of voting papers, and keep it so locked and sealed.

5. Immediately before a voting paper is delivered to an elector, the number, name, and description of the elector as stated in the copy of the register of voters shall be called out, and a mark shall be placed in the said copy of the register against the number of the elector, to denote that he has received a voting paper, but without showing the particular voting paper which he has received.

6. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by the Borough Funds Acts (Polls) Order, 1903, or (if the Poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall cause the vote of the said voter to be marked on a voting paper in manner directed by the voter, and the voting paper to be placed in the box, and the name and number on the register of voters of every voter whose vote is marked in pur-

Appendix II. suance of this rule, and the reason why it is so marked shall be entered on a list, hereinafter called "the list of votes marked by the presiding officer."

The said declaration, hereinafter referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the Form No. 3 in the third schedule to the Borough Funds Acts (Polls) Order, 1903, and no fee, stamp, or other payment shall be charged in respect of the declaration, and the said declaration shall be given to the presiding officer at the time of voting.

7. A voter who has inadvertently dealt with his voting paper in such manner that it cannot be conveniently used as a voting paper, may, on delivering to the presiding officer the voting paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another voting paper in the place of the voting paper so delivered up (hereinafter called "a spoilt paper"), and the spoilt voting paper shall be immediately cancelled.

8. The presiding officer of each station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his seal,—

(1) Each box in use at his station, unopened but with the key attached; and

(2) The unused and spoilt voting papers, placed together; and

(3) The marked copies of the register of voters, and the counterfoils of the voting papers; and

(4) The list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver the said packets to the returning officer, by whom the votes are to be counted, unless the presiding officer is himself the returning officer.

The packets shall be accompanied by a statement made by the presiding officer, showing the number of voting papers entrusted to him, and accounting for them under the heads of voting papers in the box, unused and spoilt.

9. The returning officer, while counting and recording the number of voting papers and counting the votes, shall keep the voting papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of the papers.

10. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding, if and so far as he thinks it necessary, the hours between the close of the poll and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the voting papers and other documents relating to the poll under his own seal, and shall otherwise take proper precautions for the security of the said papers and documents.

THIRD SCHEDULE.

FORM No. 1.

Form of Voting Paper.

Counterfoil No.	Form of Front of Voting Paper. (*Title or Short Title of Bill.*) POLL ON THE FOLLOWING RESOLUTIONS:—		
	——	For.	Against.
NOTE.—*The counterfoil is to have a number to correspond with that on the back of the voting paper.*	Are you for or against the resolution in favour of the promotion of— 1 2 3 4		

Form of Back of Voting Paper.

No. .

[Borough] [Urban District] of . Poll with regard to resolutions as to the promotion of the Bill, , 19 .

Note.—The number on the voting paper is to correspond with that on the counterfoil.

Appendix II.

Directions as to printing Voting Paper.

Nothing is to be printed on the voting paper except in accordance with the Borough Funds Acts (Polls) Order, 1903.

The space in the voting paper as to the resolution or resolutions must be filled up according to circumstances—for example:—

1. If a single resolution in favour of the Bill has been put to the meeting and a poll demanded on it, it will only be necessary to insert the words "The Bill," and no figures will be required; or
2. If separate resolutions have been put to the meeting, one in favour of the whole Bill (except, for example, *Part III.* and *Clauses 82* and *83*), another in favour of *Part III.* separately, and another in favour of *Clauses 82* and *83 separately*, and a poll has been demanded on all of them, it will be necessary to insert:—
   (1) The whole of the Bill (except *Part III.* and *Clauses 82* and *83*);
   (2) *Part III.* of the Bill (relating to);
   (3) *Clauses 82* and *83* of the Bill (relating to); or
3. If resolutions have been put to the meeting as in the last example, and the first resolution in favour of the whole Bill (except *Part III.* and *Clauses 82* and *83*) has been carried and no poll has been demanded upon it, while a poll has been demanded on the second and third resolutions, the latter resolutions only would be inserted, *e.g.*—
   (1) *Part III.* of the Bill (relating to);
   (2) *Clauses 82* and *83* of the Bill (relating to); and so on.

FORM No. 2.

Form of Directions for the Guidance of the Voter in voting.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross thus X in the column of the voting paper headed "For," or in that headed "Against," according as he wishes to vote in favour of or against the resolution opposite to which he places the cross.

The voter may vote in the manner above described on each resolution referred to in the voting paper where more than one resolution is there mentioned.

When the voter has voted, he must fold up the voting paper so as to show the official mark on the back, and, leaving the compartment, will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the box provided for its reception, and forthwith quit the polling station.

If the voter inadvertently spoils a voting paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

FORM No. 3.

Form of Declaration of inability to read.

I, *A. B.*, of , being numbered on the register of parochial electors for the Parish of , do hereby declare that I am unable to read.

A. B., his mark.

day of , 19 .

I, the undersigned, being the Presiding Officer for the polling station for the [Borough] [Urban District] of do hereby certify that the above declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

Signed, *C. D.*,
Presiding Officer for polling station for the [Borough] [Urban District] of .

day of , 19 .

Given under the Seal of Office of the Local Government Board, this Thirty-first day of October, in the year One thousand nine hundred and three.

(L.S.) WALTER H. LONG, *President*.

S. B. PROVIS, *Secretary*.

Appendix II.

BUILDING BYELAWS.

BYELAWS AS TO NEW STREETS AND BUILDINGS.

(Circular dated August 29th, 1912, to District Councils.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

SIR,—I am directed by the Local Government Board to inform you that they have had occasion to consider the question of byelaws made under section 157 of the Public Health Act, 1875, in force in many districts in relation to their applicability to new forms of construction and new building materials. It has also been alleged that, particularly in some rural districts, the requirements of the byelaws exercise an unduly restrictive effect upon the erection of small dwelling houses. Byelaws with respect to new streets and buildings are intended to operate in the interest of the inhabitants and to prescribe reasonable standards to which building development may fairly be called upon to conform with a view to securing stability, protection from fire, and healthy conditions, and it is obviously undesirable that the byelaws in any area should afford any ground for the suggestion that they are either unnecessarily restrictive or obsolete in character.

New methods of construction and design will almost inevitably demand periodical revision of byelaws. For example, the earlier forms of byelaws with respect to walls, which were framed with particular reference to brick construction and imposed restrictive conditions as to thickness and the use of materials, are inappropriate to types of construction now in use, such as building with hollow blocks or slabs of terra cotta, concrete and the like material, reinforced brickwork, or reinforced concrete; and many of the older byelaws do not provide for hollow and half-timbered walls and steel or other framed walls hung with tiles, slates, &c., filled in where necessary with incombustible materials. Certain relaxations are now frequently introduced in connection with wall construction where the use of piers is employed, and also in the thickness of the walls of outbuildings. Again, the ordinary clauses for the laying out of roads do not permit some of the classes of roadway which have been designed in some "garden cities," or the exceptional arrangements which are demanded in certain cases by the configuration of the ground. Local authorities have from time to time applied to the Board for approval of byelaws appropriate to such conditions or circumstances. Other local authorities have obtained express statutory powers with similar objects in view, but there are many in whose districts byelaws have been in force practically unaltered over a long period of years, byelaws which were framed before the modern methods and materials came into vogue and which consequently are not so drawn as to allow or to regulate their use. It therefore behoves all local authorities from time to time to consider the terms of the byelaws in force in their areas, so as to see that they are sufficient to meet present day requirements. The Board will be happy to render assistance to any authorities who may desire to modify their existing byelaws by referring them to clauses which have been embodied in series already adopted or by such other suggestions as may be practicable.

It is recognised that in many parts of the country, and particularly in rural areas, there is great need for better cottage accommodation, and rural district councils should be careful to see that the requirements of their byelaws, whilst prescribing conditions essential to health, are not such as to offer any impediment to the erection of suitable dwellings. There are some rural districts in which a code of byelaws based on the Board's original model series, which was drawn up with special reference to urban areas, is still in force. These codes are not only more stringent than the Board would at the present day consider necessary in a rural area, but are not relieved by the relaxations and modifications which have been embodied in the latest model code for urban districts with a view not only of meeting special difficulties but of securing greater flexibility in the administration of the byelaws. The councils of these districts should take the matter into early consideration and see whether a less exacting series of byelaws would not meet the reasonable

requirements of their area. It has been felt that in areas altogether rural in character a restricted series would be more suitable, and in 1901 the Board compiled a model series of building byelaws for rural districts, which dealt only with such matters of sanitary importance as most need regulation and control. Byelaws based on this model have to a considerable extent been adopted for these areas and the Board believe that experience in their working has shown them to be generally sufficient to secure the observance of proper sanitary requirements. The Board have also tentatively framed for working purposes a series intermediate in character between the urban and rural model codes suitable for rural areas which are beginning to assume urban characteristics. This series contains the same clauses with respect to the level, width and construction of new streets as the urban model, but includes only those clauses concerning the structure of walls, foundations, roofs and chimneys of new buildings which are the most important for securing stability and the prevention of fires, and for purposes of health. It also contains a special clause partially exempting small dwellings, where sufficiently isolated, from the structural requirements relating to walls. Copies of the rural model or of the intermediate code will be furnished by the Board to the council on application, and also draft forms in which the proposals of the council can be submitted. **Appendix II.**

Copies of this circular can be obtained either directly or through any bookseller from Messrs. Wyman, Fetter Lane, E.C.

I am, Sir, your obedient servant,

H. J. MONRO, *Secretary.*

BURIAL GROUNDS.

See "CEMETERIES."

CANAL BOATS.

REGISTRATION, ETC., OF CANAL BOATS—GENERAL ORDER.

(March 20th, 1878.)

TO THE SEVERAL REGISTRATION AUTHORITIES under the Canal Boats Act, 1877; And to all others whom it may concern.

WHEREAS by section 2 and section 9 of the Canal Boats Act, 1877 [*the sections* (ante, *p.* 1664) *are recited*].

Now therefore, we, the Local Government Board, in pursuance of the powers given by the statutes in that behalf, hereby order that on the thirtieth day of June, one thousand eight hundred and seventy-eight, the following regulations shall come into force, and shall thenceforth continue in force until revoked or varied :—

I.—FOR THE REGISTRATION OF CANAL BOATS UNDER THE CANAL BOATS ACT, 1877, INCLUDING CERTIFICATES OF REGISTRATION, AND THE FEES IN CONNECTION WITH SUCH REGISTRATION.

1. Every owner of a canal boat who may desire to register the boat as a dwelling shall apply to a registration authority (*h*) having a district abutting on the canal on which the boat is accustomed or intended to ply. *Application for registration.*

The owner in making such application shall inform the registration authority of a time and place at which the boat may be examined with a view to registration; and shall also furnish such other information as the registration authority may require in relation thereto.

(*h*) See 40 & 41 Vict. c. 60, s. 7, *ante*, p. 1666.

Appendix II.

Appointment of, and examination and report by officer of registration authority.

2. Every registration authority shall, from time to time, appoint or employ a fit and proper person to examine and report upon the several canal boats the owners whereof may, in pursuance of the regulation in that behalf, have made application to the authority for registration, and may pay him a reasonable remuneration for such examination and report.

Every person so appointed or employed shall ascertain and duly record with respect to the boat and the cabin or cabins thereof the several particulars requisite to enable him to furnish the information to be set forth in a report which shall be in the Form A. in the schedule to these regulations, and shall be submitted to the registration authority at their next ordinary meeting, or at a special meeting to be called for the purpose.

Registration of boat.

3. The following conditions shall be complied with before a canal boat is registered; that is to say—

(a) The boat shall contain a cabin or cabins, clean, in good repair, and so constructed as to be capable of being maintained at all times weatherproof, dry, and clean.

(b) The interior of any after cabin intended to be used as a dwelling shall contain not less than 180 cubic feet of free air space, and the interior of any fore cabin, if intended to be so used, shall contain not less than 80 cubic feet of free air space.

(c) Every cabin, if intended to be used as a dwelling, shall be provided with sufficient means for the removal of foul, and the admission of fresh air, exclusive of the door or doors and of any opening therein.

(d) Every cabin, if intended to be used as a dwelling, shall be so constructed or fitted as to provide adequate and convenient sleeping accommodation for the persons allowed by these regulations to dwell in the boat.

(e) If the boat be a "narrow" boat, every cabin intended to be used as a dwelling shall be so constructed or fitted that there shall be no locker or cupboard obstructing the free passage from the door to the bulkhead, and no shut-up cupboard above the cross-bed on more than one side of the cabin.

(f) One cabin at the least in the boat shall be furnished with a suitable stove and chimney in a safe and convenient situation, and in all other respects sufficient for the reasonable requirements of the persons allowed by these regulations to dwell in the boat.

(g) The boat shall be properly furnished or fitted with lockers, cupboards and shelves of suitable construction and adequate capacity, and in all other respects sufficient for the reasonable requirements of the persons allowed by these regulations to dwell in the boat.

(h) The boat, if intended to be ordinarily used for the conveyance of any foul or offensive cargo, shall contain, between the space to be occupied by such cargo and the interior of any cabin intended to be used as a dwelling, two bulkheads of substantial construction, which shall be separated by a space not less in any part than four inches, and open throughout to the external air, and furnished with a pump for the removal of any liquid from such space, and the one next adjoining the space to be occupied by the cargo shall be water-tight.

(i) The boat shall be furnished with a suitable cask or other appropriate vessel or receptacle of sufficient capacity for the storage of not less than three gallons of water for drinking.

In every case where the conditions hereinbefore prescribed have been complied with, the registration authority shall cause the boat to be registered, in the book in the Form B. in the schedule to these regulations, as a dwelling for the number of persons allowed by the said regulations to dwell therein.

Notice of change of master.

4. The owner of a canal boat which may have been registered as a dwelling shall, from time to time, on every new appointment of a master, notify in writing to the registration authority the christian name and surname of the master newly appointed.

Certificate of registration.

5. Each of the two certificates of registration which, in pursuance of the provisions of section 3 of the Canal Boats Act, 1877, the registration authority

upon registration of a canal boat under that Act, shall give to the owner of the boat, shall, in addition to such other particulars as may seem fit to the authority, contain the several particulars set forth in the Form C. in the schedule to these regulations. **Appendix II.**

Fees in connection with registration.

6. Every owner of a canal boat applying for registration shall, before the delivery of the certificates, pay to the registration authority the sum of five shillings, as a fee in connection with the registration of the boat (*i*).

II.—FOR THE LETTERING, MARKING, AND NUMBERING OF REGISTERED BOATS (*k*).

7. Every owner of a canal boat registered as a dwelling shall forthwith, upon the receipt of the certificates of registration from the registration authority, cause such boat to be lettered, marked, and numbered in accordance with the following rules; that is to say,—

(a) The word "registered," the name of the place to which the boat has been registered as belonging, the registered number of the boat, and such distinctive mark or marks as may be required by the registration authority, and may be specified in the certificates of registration, shall be painted white on a black ground in a conspicuous position on the outside of one of the cabins of the boat.

(b) The name of the place to which the boat has been registered as belonging, and the registered number of the boat, shall be painted in Roman capital letters and figures, not less than two inches in height.

III.—FOR FIXING THE NUMBER, AGE, AND SEX OF THE PERSONS WHO MAY BE ALLOWED TO DWELL IN A CANAL BOAT, HAVING REGARD TO THE CUBIC SPACE, VENTILATION, PROVISION FOR THE SEPARATION OF THE SEXES, GENERAL HEALTHINESS, AND CONVENIENCE OF ACCOMMODATION OF THE BOAT.

8. For the purpose of fixing the number, age, and sexes of the persons who may be allowed to dwell in a canal boat, which conforms to the conditions of registration provided by these regulations, and which shall, in pursuance of the statutory provision in that behalf, have been registered as a dwelling, the following rules shall apply:—

(a) Subject to the conditions hereinafter prescribed with respect to the separation of the sexes, the number of persons who may be allowed to dwell in the boat shall be such that in the cabin or cabins of the boat there shall be not less than 60 cubic feet of free air space for each person above the age of 12 years, and not less than 40 cubic feet of free air space for each child under the age of 12 years:

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, the free air space for each child under the age of 12 years shall be deemed sufficient if it is not less than 30 cubic feet.

Provided also, that in the case of a boat registered as a "fly" boat, and worked by shifts, by four persons above the age of 12 years, there shall be not less than 180 cubic feet of free air space in any cabin occupied as a sleeping place by any two of such persons at one and the same time.

(b) A cabin occupied as a sleeping place by a husband and wife shall not at any time while in such occupation be occupied as a sleeping place by any other person of the female sex above the age of 12 years, or by any other person of the male sex above the age of 14 years:

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, a cabin occupied as a sleeping place by husband and wife may be occupied by one other person of the male sex above the age of 14 years, subject to the following conditions:—

(i.) That the cabin be not occupied as a sleeping place by any other person than those above mentioned;

(*i*) As to the application of this fee, see 40 & 41 Vict. c. 60, s. 11, *ante*, p. 1667.
(*k*) See 40 & 41 Vict. c. 60, s. 3, *ante*, p. 1664; and 47 & 48 Vict. c. 75, s. 7, *ante*, p. 1790.

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(ii.) That the part of the cabin which may be used as a sleeping place by the husband and wife shall, at all times while in actual use, be effectually separated from the part used as a sleeping place by the other occupant of the cabin, by means of a sliding or otherwise moveable screen or partition of wood or other solid material, so constructed or placed as to provide for efficient ventilation.

(c) A cabin occupied as a sleeping place by a person of the male sex above the age of 14 years shall not, at any time, be occupied as a sleeping place by a person of the female sex above the age of 12 years, unless she be the wife of the male occupant, or of one of the male occupants in any case within the proviso to Rule b.

IV.—For promoting Cleanliness in and providing for the Habitable Condition of Canal Boats.

Renewal of paint.

9. The owner of a canal boat which may have been registered as a dwelling shall, once at least in every three years, cause the paint on every surface in the interior of every cabin which may be used as a dwelling to be thoroughly renewed.

Removal of bilge water.

10. The master of a canal boat which may have been registered as a dwelling shall cause all bilge water to be removed therefrom by pumping as often as may be necessary to prevent any collection of such water beneath the floor of any cabin which may be used as a dwelling, and, in any case, not less frequently than once in every twenty-four hours.

Cabins to be kept cleanly and habitable.

11. The master of a canal boat which may have been registered as a dwelling shall cause every cabin which may be used as a dwelling to be kept at all times in a cleanly and habitable condition.

V.—For preventing the Spread of Infectious Disease by Canal Boats (*l*).

Notification of infectious disease.

12. In every case where a person on a canal boat is seriously ill or is evidently suffering from an infectious disease, the master of the boat, if, at the time, the boat is proceeding on a journey, shall, as soon as may be practicable, give information thereof to the sanitary authority within whose district is situate the canal or the part of the canal along which the boat may at the time be passing, and, on the arrival of the boat at its port or place of destination, to the sanitary authority within whose district such port or place is situate, and also to the owner of the boat.

If at the time the boat be at its port or place of destination, the master shall forthwith inform the sanitary authority within whose district such port or place is situate, and also the owner of the boat, that a person on board the boat is seriously ill or is evidently suffering from an infectious disease.

The owner of the boat shall forthwith, upon the receipt from the master of information to the effect that a person on board the boat is or has been suffering from an infectious disease, give notice to that effect to the sanitary authority having jurisdiction in the place to which the boat may have been registered or belonging.

Certificate of cleansing and disinfection.

13. In every case where, in the exercise of the power conferred by section 4 of the Canal Boats Act, 1877 (*m*), a sanitary authority may have detained a canal boat for the cleansing and disinfection thereof, the authority, before allowing the boat to proceed on its journey, shall obtain from their medical officer of health, or from some other legally qualified practitioner, a certificate to the effect that the boat has been duly cleansed and disinfected, and shall cause such certificate to be delivered to the master of the boat. The sanitary authority may pay a reasonable remuneration for any such certificate.

VI.—Interpretation of Terms.

14. In these regulations, unless the context otherwise requires, words have the same meaning as in the Canal Boats Act, 1877 (*n*).

(*l*) See 40 & 41 Vict. c. 60, s. 4, *ante*, p. 1665.
(*m*) *Ante*, p. 1664.
(*n*) See 40 & 41 Vict. c. 60, s. 14, *ante*, p. 1667.

Appendix II.

The expression "wide boat" means a boat not less than seven feet six inches beam:

The expression "narrow boat" means a boat of less than seven feet six inches beam.

SCHEDULE.

FORM A.

EXAMINING OFFICER'S REPORT ON CANAL BOATS.

1. Time and place of examination of Canal Boat .
2. Name, or, if there be no name, the number of the Canal Boat examined .
3. Christian name, surname, and address of owner (1) .
4. Christian name and surname of master .
5. Route along which the boat is accustomed or intended to ply .
6. Nature of the traffic in which the boat is accustomed or intended to be employed .
7. Mode of propulsion;
   and whether a "wide" or "narrow" boat;
   and whether to be used as a "fly" boat worked by shifts.
8. Number of cabins in the boat .
9. Dimensions and cubical capacity of the cabin or cabins:—
   Rule of measurement and of deduction adopted:—(2)

		ft.	in.
After cabin .	Height		
	Length		
	Width		
	Gross cubical capacity .		
	Net cubical capacity or free air space .		
Fore cabin .	Height		
	Length		
	Width		
	Gross cubical capacity .		
	Net cubical capacity or free air space .		

10. Description of the construction, furniture, and fittings of the boat, and the several cabins thereof, as regards the following details, viz.—
   (a) Whether each cabin is clean, in good repair, weatherproof, and capable of being kept dry and clean.
   (b) What means are provided in each cabin for the removal of foul, and the admission of fresh air, exclusive of the door or doors and of any opening therein.
   (c) What provision is made in respect of lockers, cupboards, and shelves in the boat.
   (d) What provision is made for sleeping accommodation in each cabin.
   (e) If the boat be a "narrow" boat; whether every cabin intended to be used as a dwelling is so constructed or fitted that there shall be no locker or cupboard obstructing the free passage from the door to the bulkhead, and no shut-up cupboard above the cross-bed on more than one side of the cabin.
   (f) Whether each or either cabin contains a stove and chimney of suitable construction and situation.
   (g) If the boat be intended to be used for the conveyance of any foul or offensive cargo; whether there are between the space to be occupied by such cargo, and the interior of each cabin intended to be used as a dwelling, two bulkheads of substantial construction, of which that one next adjoining the space to be occupied by the cargo shall be watertight, and which shall be separated by a space not less in any part than four inches, and open throughout to the external air, and furnished with a pump for the removal of any liquid from such space.

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(h) Whether the boat is furnished with a suitable cask or other appropriate vessel or receptacle of sufficient capacity for the storage of not less than three gallons of water for drinking.

General Observations as to the Fitness of the Boat for Registration as a Dwelling.

Dated this day of 18 .

———, *Examining Officer.*

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(1) If the boat is owned by a partnership firm, or by a company or association, corporate or unincorporate, state the name of the firm, company, or association, and their principal office or place of business.

(2) Here state which of the following rules has been adopted in determining the internal dimensions and cubical capacity of the cabin or cabins; distinguishing, in each case, where necessary, the rate of deduction.

RULE A. (for "wide" boats).

Measure :—

The height from the floor to the roof in the middle of the cabin.

The length from the bulkhead to the door of the opposite cupboard.

The width across the cabin at the bulkhead.

The product of the height, length, and width thus measured will represent, for the purpose of this Rule, both the gross and the net cubical capacity of free air space.

RULE B. (for "narrow" boats).

Measure :—

The height from the floor to the roof in the middle of the cabin.

The length from the bulkhead to the end of the cabin at the side of the doorway.

The greatest width from side to side of the boat at the bulkhead.

The product of the height, length, and greatest width thus measured will represent the gross cubical capacity of the cabin.

To obtain the net cubical capacity or free air space of the cabin, deduction from the gross cubical capacity should be made in accordance with the following directions :—

1. If the cabin have only the following shut-up cupboards or lockers, viz. : a table cupboard, a side bed-locker or cupboard, a cross bed-locker or lockers, and a cupboard above the cross-bed,—
   - (a) If the height of the cabin be not less than five feet, deduct $\frac{1}{5}$th.
   - (b) If the height of the cabin be less than five feet, deduct . $\frac{1}{4}$th.
2. If the cabin have only the following shut-up cupboards or lockers, viz. : a table cupboard, a cross bed-locker or lockers, and a cupboard above the cross-bed,—
   - (a) If the height of the cabin be not less than five feet, deduct $\frac{1}{7}$th.
   - (b) If the height of the cabin be less than five feet, deduct . $\frac{1}{8}$th.
3. If the cabin have only the following shut-up cupboards or lockers, viz. : a table board and a cupboard, above the cross-bed,—
   - (a) If the height of the cabin be not less than five feet, deduct $\frac{1}{10}$th.
   - (b) If the height of the cabin be less than five feet, deduct . $\frac{1}{12}$th.

FORM B.

REGISTER OF CANAL BOATS.

———, *Registration Authority.*

1. Registration number of the boat .
2. Name of the boat, or, if there be no name, the number .
3. Christian name, surname, and address of owner (1) .
4. Christian name and surname of master .
5. Route along which the boat is accustomed or intended to ply .
6. Nature of the traffic in which the boat is accustomed or intended to be employed .
7. Mode of propulsion ;
   and whether a "wide" or "narrow" boat ;
   and whether to be used as a "fly" boat worked by shifts.
8. Number of cabins in the boat .

9. Dimensions and cubical capacity of the cabin or cabins :—
Rule of measurement and of deduction adopted (2) :—

		ft.	in.
After cabin	Height		
	Length		
	Width		
	Gross cubical capacity		
	Net cubical capacity or free air space		
Fore cabin	Height		
	Length		
	Width		
	Gross cubical capacity		
	Net cubical capacity or free air space		

10. Date of application for registration .
11. Date of examination by Officer of Authority .
12. Date of registration .
13. Place to which the boat is registered as belonging, for the purposes of the Elementary Education Acts.

(*This must be some place which is either a School District or is part of a School District, and is situate wholly or partly within the jurisdiction of the Registration Authority : See* 40 *&* 41 *Vict. c.* 60, *s.* 7.)

14. Maximum number of persons for which the boat is registered, subject to the conditions prescribed with regard to the separation of the sexes.

[*Note.—In the case of a boat built after the* 30*th of June,* 1878, *three children under the age of* 12 *years may be reckoned, as regards the minimum of free air space, as equivalent to two persons above the age of* 12 *years. In the case of a boat built prior to the* 30*th of June,* 1878, *two children under the age of* 12 *years may be reckoned as equivalent to one person above the age of* 12 *years : See Art.* 8*a. of the Order.*]

As a "fly" boat worked by shifts. } persons.
Otherwise than as a "fly" boat—
In after cabin persons.
In fore cabin persons.

15. Observations.
16. Initials of Clerk or Chairman of Sanitary Authority acting as the Registration Authority .

(1) If the boat is owned by a partnership firm, or by a company or association, corporate or unincorporate, state the name of the firm, company or association, and their principal office or place of business.

(2) Here state whether Rule A. or Rule B. [see note to the Form A. of examining Officer's Report] has been adopted in the measurement of the cabin or cabins ; distinguishing in each case, where necessary, the rate of deduction.

FORM C.

CERTIFICATE OF REGISTRATION OF A CANAL BOAT UNDER THE CANAL BOATS ACT, 1877.

————, *Registration Authority.*

Registration Number of Boat .

Whereas application has been made to us, the (*o*) acting as the Registration Authority under the Canal Boats Act, 1887, to register as a dwelling a canal boat, of which (*p*) , of is the owner, and which is accustomed or intended to ply [as a fly boat worked by shifts (*q*)] on the canal whereon the said district abuts ;

And whereas we have ascertained that the said boat conforms to the conditions of registration provided by the Regulations of the Local Government Board for the number of persons allowed by the said regulations to dwell therein :

Now we, the said (*o*) , acting as the Registration Authority, do hereby certify as follows ; that is to say,—

1. That the boat named (*r*) , whereof (*p*) , of , is the owner, has been duly registered as a dwelling ;

(*o*) Here insert the description of the sanitary authority and the name of their district.

(*p*) If the boat is owned by a partnership firm, or by a company, or association, corporate or unincorporate, state the name of the firm, company, or association, and their principal office or place of business.

(*q*) If it is not a fly boat, strike out these words.

(*r*) Or "numbered," if the boat be not named.

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2. That the place to which the said boat has been registered as belonging, for the purposes of the Elementary Education Acts is ;

3. That the number with which, in pursuance of the statutory provision in that behalf, the said boat is required to be numbered is ;

4. That the distinctive mark or marks with which we require the said boat to be marked is or are ;

5. That in accordance with the provisions contained in the subjoined Article of an Order of the Local Government Board, dated the twentieth day of March, one thousand eight hundred and seventy-eight, the maximum number of persons for which the said boat is registered as a dwelling is as follows :—

As a fly boat worked by shifts . persons.
Otherwise than as a fly boat—
In after cabin . . . persons.
In fore cabin . . . persons.

The Article above referred to is as follows :—

For the purpose of fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, which conforms to the conditions of registration provided by these regulations, and which shall, in pursuance of the statutory provision in that behalf, have been registered as a dwelling, the following rules shall apply :—

(a) Subject to the conditions hereinafter prescribed with respect to the separation of the sexes, the number of persons who may be allowed to dwell in the boat shall be such that in the cabin or cabins of the boat there shall be not less than 60 cubic feet of free air space for each person above the age of 12 years, and not less than 40 cubic feet of free air space for each child under the age of 12 years :

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, the free air space for each child under the age of 12 years shall be deemed sufficient if it is not less than 30 cubic feet.

Provided also, that in the case of a boat registered as a " fly " boat, and worked by shifts, by four persons above the age of 12 years, there shall be not less than 180 cubic feet of free air space in any cabin occupied as a sleeping place by any two of such persons at one and the same time.

(b) A cabin occupied as a sleeping place by a husband and wife shall not, at any time while in such occupation, be occupied as a sleeping place by any other person of the female sex above the age of 12 years, or by any other person of the male sex above the age of 14 years :

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, a cabin occupied as a sleeping place by a husband and wife may be occupied by one other person of the male sex above the age of 14 years, subject to the following conditions :—

(i.) That the cabin be not occupied as a sleeping place by any other person than those above mentioned :

(ii.) That the part of the cabin which may be used as a sleeping place by the husband and wife shall, at all times while in actual use, be effectually separated from the part used as a sleeping place by the other occupant of the cabin by means of a sliding or otherwise moveable screen or partition of wood or other solid material, so constructed or placed as to provide for efficient ventilation.

(c) A cabin occupied as a sleeping place by a person of the male sex above the age of 14 years shall not, at any time, be occupied as a sleeping place by a person of the female sex above the age of 12 years, unless she be the wife of the male occupant, or of one of the male occupants in any case within the proviso to Rule (b).

Given at (*s*) under the common seal of the acting as the Registration Authority, this day of , in the year one thousand eight hundred and .

————, *Clerk to the* .

Given under the Seal of Office of the Local Government Board, this twentieth day of March, in the year one thousand eight hundred and seventy-eight.

(L.S.) G. SCLATER-BOOTH, *President.*

(*s*) Or where the authority have no common seal, substitute " under the hand of three members of the ."

CANAL BOATS ACTS.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,

16th December, 1912.

SIR,—I am directed by the Local Government Board to draw attention to section 3 of the Canal Boats Act, 1884, which provides that every sanitary authority within whose district any canal or part of a canal is situate, shall make an annual report to the Board as to the execution of the Canal Boats Acts, 1877 and 1884, and of the regulations made thereunder, and as to the steps taken by such authority during the year to give effect to the provisions of the said Acts and Regulations.

This section also prescribes 21 days after the 31st day of December in each year as the period within which such annual report shall be made; and the Board rely upon receiving within that period the report of the authority with respect to any canal within their jurisdiction.

It appears to the Board to be desirable that the report should include information, *inter alia*, as to

(1) The arrangements made for the inspection of boats and the name, address, and remuneration of the inspector:

(2) The number of boats inspected in 1912, and the condition of the boats and their occupants as regards the matters dealt with in the Acts and Regulations:

(3) Any infringement of the Acts and Regulations with respect to (a) Registration; (b) Notification of change of Master; (c) Certificates; (d) Marking; (e) Overcrowding; (f) Separation of the sexes; (g) Cleanliness; (h) Ventilation; (i) Painting; (j) Provision of water cask; (k) Removal of bilge water; (l) Notification of infectious disease; (m) Admittance of inspector:

(4) Legal proceedings taken in respect of any such infringements, and penalties inflicted:

(5) Any other steps taken to secure compliance with the Acts and Regulations as regards such infringements:

(6) Cases of infectious disease dealt with, and measures of isolation adopted:

(7) Detention of boats for cleansing and disinfection:

and, in the case of registration authorities,

(8) The total number of boats on the register, showing:—
(a) Number of boats believed to be in use or available.
(b) Number of boats that cannot be traced.

(9) The number registered in 1912, distinguishing the cases in which fresh registration has been rendered necessary by structural alterations in boats previously registered.

I am, Sir, your obedient servant,

F. J. WILLIS, *Assistant Secretary*.

The Town Clerk, or *The Clerk to the District Council*.

CEMETERIES.

MEMORANDUM OF THE LOCAL GOVERNMENT BOARD ON THE SANITARY REQUIREMENTS OF BURIAL GROUNDS.

(July, 1908.)

The sanitary considerations to be held in view in connection with the provision of burial grounds may be summed up under the four following headings:—

I. Suitable soil and proper elevation of site.

II. A suitable position, especially with respect to houses and sources of water supply.

Appendix II.

III. Sufficient space.

IV. Proper regulation and management.

I. The soil of a burial ground should be preferably of an open porous nature, with numerous close interstices, through which air and moisture may pass in a finely divided state freely in every direction. In such a soil decay proceeds rapidly, and the products of decomposition are absorbed or oxidised. The soil should be easily worked, yet not so loose as to render the work of excavation dangerous through the liability to falls of earth. It should be free from water or hard rock to a depth of not less than 4 feet 3 inches if only one interment is to be made in each grave. This would allow 1 foot 3 inches for depth of coffin and 3 feet for cover of earth above the coffin. If more than one interment in a grave is contemplated the soil should be free from water or hard rock to a proportionately greater depth, allowance being made for a layer of earth not less than 6 inches in thickness between any two coffins. If the soil is not naturally free from water, it may be found necessary to drain the site to the required depth, and hence the site should be sufficiently elevated above the drainage level of the locality, either naturally, or, where necessary, by filling it up to the required level with suitable earth.

A dense clay is laborious to work and difficult to drain; by excluding moisture and air it retards decay, and it retains, in a concentrated state, the products of decomposition, sometimes to be discharged into graves opened in the vicinity, or sometimes to escape through cracks in the ground to the surface. A loose stony soil, on the other hand, may allow the passage of effluvia, and of imperfectly purified drainage water.

II. The situation of a burial ground requires consideration from several points of view. While public convenience requires that the burial ground shall not be too far distant from the population for which it is intended, a due regard to possible risk of injury to public health or property and considerations of sentiment render it desirable to avoid populous neighbourhoods and those in which building is likely to take place. The most suitable distance will vary in different cases; it will be greater in the case of a large than of a small burial ground; greater also in the case of a large and rapidly extending town than in that of a small village the population of which shows no tendency to increase.

Proximity to places of worship at which the burial service can take place, thus avoiding the need for erection of a chapel, may sometimes have weight in the selection of a site.

With regard to the minimum distance which should intervene between burial grounds and human habitations, section 9 of the Burial Act, 1855 (as amended by section 1 of the Burial Act, 1906), prescribes that no burial ground not in use at that date shall be used for burials under that Act within a distance of 100 yards from any dwelling house (not being a dwelling house erected or completed after any part of the ground has been so used or appropriated) without the consent in writing of the owner, lessee, and occupier of such dwelling house. And by section 10 of the Cemeteries Clauses Act, 1847 (as amended by section 2 of the Burial Act, 1906), which is incorporated with the Public Health (Interments) Act, 1879, a cemetery provided under those Acts is not to be constructed nearer to any dwelling house than 100 yards, except with the consent in writing of the owner, lessee, and occupier.

It may be taken that the above distance is amply sufficient to prevent any injury arising to the health of occupants of dwelling houses from a well-kept burial ground, so far as regards noxious matters transmitted through the air, but burial grounds will not in all cases, and at all times, be distant 100 yards from the nearest human habitation. With the consent of the owners, lessees, and occupiers of existing houses, a burial ground may be established within the prescribed limits; and it is, of course, competent to anyone afterwards to erect a new house as near to a burial ground as he pleases. It does not appear, however, that any serious amount of danger to health is to be feared from proximity to a well-kept burial ground. In former times when burials took place in overcrowded churchyards in the midst of towns, and in vaults under the churches themselves, grave nuisances and injurious effects on health did no doubt occur; but since intramural interment has practically ceased, well founded allegations of injury to health, or even of nuisance

arising from graveyard emanations, whether conveyed by air or water, are extremely rare.

Although there is no reason why a burial ground should necessarily be a nuisance, or become a source of danger to the health of those living near it, yet in order to obviate any risk of contamination with decomposing matters of the ground-air and subsoil water in the neighbourhood of the burial ground where houses may be built (especially if such houses are constructed with cellars), it is desirable that interments should not be made up to the extreme edge of the burial ground ; and it would be possible, without great waste of space, to reserve in all cases a strip of ground free from interments, say 15 feet in width, around the whole burial ground on the interior of the boundary fence. This strip would afford room, on the inside, for a gravel or asphalte walk to give access to all parts of the burial ground, and on the outside next the fence, for a belt of shrubs or trees, the rootlets of which, penetrating the soil, would arrest and assimilate products of decomposition percolating to the exterior of the burial ground. Obviously a burial ground should not be placed on elevated ground above houses, where the soakings from it may percolate to the sites and foundations of the dwellings below.

The degree to which the purity of neighbouring wells is endangered by a burial ground, and the distance to which contamination may extend, will depend in each particular case upon the relative elevation of the respective sites of burial ground and well, and upon the nature and dip of the intervening strata and the direction and amount of flow of underground water, so that it is impossible to lay down a general rule for all cases. Fissured rock might allow foul matters to traverse considerable distances, while the interposition of a bed of clay or a water-tight fault would shut them off, or the passage through an aerated stratum of finely divided earth would oxidise and destroy them on their way. The risk of pollution would seem to be greatest when graves and wells are sunk near together in a shallow superficial water-bearing stratum of loosely porous nature resting on impervious clay, the water in the superjacent bed being stagnant.

It does not appear, however, that the risk to which wells are exposed from the proximity of a properly managed burial ground is in ordinary cases great. It is probably less than that to which in unsewered villages they are exposed by soakage into the subsoil from cesspools and privies ; seeing that the solid and liquid excretions voided by a human being in the course of a single year amount to several times the weight of his body.

In this connection attention may be called to the researches of Dr. Klein (" Report of the Fate of Pathogenic and other Infective Microbes in the Dead Animal Body " in the Appendix to the Annual Report of the Medical Officer of the Local Government Board, 1899), the results of which are thus summarised by him :— " Direct experiment lends no confirmation to the general and popular belief that the microbes of infectious disease retain their vitality and power of mischief within dead and buried bodies for indefinite periods. On the contrary these researches show that, as far as the bodies of the guinea-pig are concerned, the vitality and infective power of those microbes that have been made the subject of experiment passes away in a comparatively short time ; that in most cases a month is sufficient for this result ; that is to say, long before the coffins containing the buried bodies have shown any indication of leakage." This statement, however, does not apply to poisonous chemical products of decomposition, which may long retain noxious properties, especially where the circumstances are such as to exclude free access of air.

The precautions to be taken to avoid pollution of wells and springs in the neighbourhood of a burial ground will depend much upon local circumstances ; they may be said to be, 1st, the intervention of a sufficient space between the burial ground and the water source ; 2nd, proper drainage, where necessary, in order that the subsoil water of the burial ground shall be conveyed away ; and 3rd, proper management of the burial ground, so that the amount of organic matter in one place shall not be more than the soil can dispose of. In cases where the Board's sanction or approval is required a site would not be approved if it appeared likely that the purity of existing water supplies would be endangered, though, as in the case of the erection of new houses, when a burial ground has come into existence, there is no power to prevent any one

Appendix II. from sinking a well on his own property, as near to the burial ground as he pleases. Of course, should the well become polluted, it can be dealt with under the provisions of the Public Health Act. The reservation, free from interments, of a strip of land next the boundary, as before recommended, would be of service in this relation also.

The drainage water from a burial ground should not be allowed to enter a stream from which water is drawn for domestic purposes. Special treatment will be necessary of the subsoil drainage of a burial ground before its admission to any stream in cases where the soil of the burial ground is of unsuitable character so that the drainings from the graves will be liable to escape adequate filtration.

Sites are of course unsuitable which are liable to be flooded, or to landslips, or which are in danger of being washed away or encroached upon by streams or the sea. Very steep sites are not desirable. The burial ground should be accessible by good roads from all parts of the district.

III. *Sufficiency of Space.*—On sanitary grounds it is requisite that each corpse shall be surrounded and covered by a mass of earth sufficient to deodorise and destroy the putrid emanations proceeding from it, and also that the total amount of space shall be so great that it may not be necessary to re-open any grave until the body previously interred therein is completely decomposed. On administrative grounds it is requisite that the accommodation provided should, in general, be sufficient to serve for the term of years over which the repayment of the loan is spread. On sentimental grounds it is desirable that sufficient space should be reserved to permit of members of the same family, or of the same religious denomination, being interred near together. The latter consideration alone is usually sufficiently powerful to render local authorities desirous of providing more than the minimum amount of space.

The size recommended for grave spaces (*i.e.*, of the plots of ground, each to contain one grave, into which the burial ground is to be divided) is 9 feet long by 4 feet broad = 4 square yards, for an adult; and for a child under twelve years old, 2 square yards, viz., either 4½ feet by 4 feet, or 6 feet by 3 feet. These sizes, which are conveniently commensurate with one another, allow the retention of a strip of undisturbed ground about two feet in width between every two adjacent graves. In any case it is important that each grave should be at least a foot distant from the nearest graves on every side, not only to prevent the passage of effluvia into the open grave from decomposing bodies in the adjoining graves, but also to avoid the danger of falls of earth, which may happen if excavations are made too near to ground which has been previously disturbed.

The amount of space required for each 1,000 population will vary to some extent with the death-rate; but where the mortality is high, a larger proportion of the deaths will usually be those of persons under twelve. Taking average numbers, in a stationary population of 1,000, there will be, say, 19 deaths per annum, of which about 7 will be of children under twelve years of age, and 12 of persons above that age.

For the interment of the persons above twelve, 12 plots of 4 square yards = 48 square yards of ground will be required, and for the children under 12, 7 plots of 2 square yards = 14 square yards—total 62 square yards yearly.

The necessary paths and buildings usually occupy about a sixth of the surface of a burial ground, so that in an acre of ground about 4,033 square yards would be available for grave spaces. Thus, on the above figures, and assuming that only a single interment were made in each grave, an acre of ground would last 65 years for a population of 1,000.

If the suggestion previously made in this memorandum,—to leave a strip free from graves 15 or more feet in width around the margin of the burial ground,—be adopted, a somewhat larger amount of land will be required. The proportion will vary with the size and shape of the plot of land: thus a strip 15 feet wide around an acre of land, if the plot be square (*i.e.*, 69½ yards in the sides), will take up 1,290 square yards, or rather more than a fourth; if the plot be rectangular, 55 yards by 88 yards, a belt 15 feet wide will require 1,330 square yards. This belt, however, may be utilised for paths and shrubberies, so that we may estimate that an acre of land would serve for a

population of 1,000 for 50 years, if only a single interment were made in each grave space.

If, however,—as is the usual practice where the nature of the soil permits—the graves are made in the first instance of sufficient depth to allow other bodies to be subsequently buried above the first, the length of time during which the burial ground will remain available will be proportionately increased. The depth of a coffin is about 15 inches, and on the re-opening of a grave, a layer of earth not less than 6 inches thick should be left undisturbed above the coffin previously interred. Hence, on the above assumptions, each addition of not less than one-and-three-quarters feet to the original depth of graves will represent a further period of, approximately, 50 years during which the ground will remain available.

The period for which cemetery provision on the above scale will remain available will be still further lengthened if the soil be of a sort to promote speedy decay of the coffins and bodies. The length of time necessary to effect complete decomposition varies (the material of coffins being similar) (*t*) according to the nature of the soil, being shorter in a porous well-aerated soil than in one which is either dense and clayey, waterlogged, or surcharged with animal matter. The bodies of children decay more rapidly than those of adults, under like circumstances. In an open soil if an adult body be buried in an ordinary wooden coffin, at the end, say, of 14 years, the coffin and the softer parts of the corpse may be found completely decayed, only the larger bones remaining, and the coffin collapsed, so as to occupy a vertical space only a few inches in thickness; the grave might then, so far as sanitary considerations are concerned, be re-opened nearly to its original depth, without disturbing the remains of the body previously interred. Thus if the grave be made originally, say, 8 feet deep, a number of burials may be made in it before it becomes so full of bones as to be unfit for further use. In a dense clay soil on the other hand such coffins are found intact after having been buried 30 years or more, so that in a grave 8 feet deep in such a soil there would not be room for more than three adult interments, if the rules to leave at least 6 inches of earth between any two coffins in the same grave and not to bury within 3 feet of the surface, were observed.

Under the most favourable circumstances, if the population be stationary, and the soil of the burial ground be of an open texture and of such a nature as to permit burials to a depth of 8 feet, it may be estimated that at least a quarter of an acre of ground should be provided for each thousand inhabitants to serve for a period of 30 years. More space will of course be needed if the population is an increasing one, or if the number of burials is increased by special circumstances, such as deaths in institutions, or bodies cast up from the sea. In wealthy districts in which many family graves are likely to be purchased, the burial ground will not—other things being equal—be available so long as in a poor district in which most of the burials are in common graves; much of the ground in the first case being appropriated though not filled. In a poor district on the other hand the death rate is likely to be the higher. Bodies buried in walled graves occupy the ground permanently, and do not by their decay make room for others.

IV. *Regulation and Management.*—Some of the points coming under this heading have already been referred to.

In order to obviate the risk of re-opening graves in which the body previously interred may be in a state of offensive decomposition, the Board's Model Byelaws provide that, where a grave is re-opened for the purpose of making another interment therein, any soil which is offensive should not be disturbed

(*t*) In ordinary circumstances, burial in the earth in coffins of a perishable nature is to be preferred, on sanitary as well as on economic grounds, to the use of graves and coffins of durable and impervious materials. In the former case, if the earth is of suitable nature, the resolution of the constituents of the body into innocuous inorganic substances proceeds rapidly and uninterruptedly. In the latter case the poisonous products of a partial and arrested decomposition are sealed up; it may be to be liberated by the disturbance of the grave on a future occasion. But as it is doubtful whether public sentiment is yet ripe for the prohibition of vault burial, provisions for its regulation have been inserted in the model byelaws as to cemeteries with a view to reducing the dangers of this mode of burial to a minimum.

Appendix II. or removed. In any case a layer of earth, not less than six inches thick, should intervene between the coffin and any other previously placed in the same grave.

It is necessary, both for the carrying out of a proper practice as regards the re-opening of graves, and also to enable the place of burial of any particular person to be identified, if desired, that so much of the burial ground as is to be used for interments should be divided into numbered grave-spaces, and that a register of graves should be kept, in which the depth of grave and the name, age, and date of burial of the person or persons interred should be duly recorded. The grave spaces should be distinguished by appropriate marks (which may conveniently consist of a number at the end of each longitudinal row of graves and a letter at the end of each transverse row, or *vice versâ*), and the position and number of each should also be marked on a plan. This is obligatory under section 41 of the Cemeteries Clauses Act, 1847, for burial-places in which an exclusive right of burial has been granted in cemeteries to which that Act applies, and it is desirable, for the reasons above given, that all grave-spaces should be similarly distinguished.

Byelaws may be made by District Councils for the management of cemeteries provided by them under the Public Health (Interments) Act. The model byelaws issued by the Local Government Board are appended.

July, 1908.

APPENDIX.

BYELAWS made by the (*u*)
with respect to the MANAGEMENT of the CEMETERY provided by them, and CHARGES for the use of the same.

1. In the construction of these byelaws the following words and expressions shall have the meanings hereinafter respectively assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject-matter in which such words or expressions occur; that is to say,

"The Council" means the (*u*)

"The Cemetery" means the cemetery provided by the Council and situate at (*x*)

"Grave" means a burial-place formed in the ground by excavation and without any internal wall of brickwork or stonework or any other artificial lining:

"Vault" includes underground burial-places of every description, except graves to which the word "grave" interpreted as aforesaid applies.

2. Every person who, in the cemetery, causes a vault to be built for use as a burial-place, shall cause the vault to be enclosed with walls constructed of good bricks, stone or other hard and suitable material, properly bonded and solidly put together:

(a) With good mortar compounded of good lime and clean sharp sand or other suitable material; or

(b) With good cement; or

(c) With good cement mixed with clean sharp sand.

3. A person shall not, in the cemetery, cause the body of any person to be buried in a grave in such a manner that any part of the coffin containing the body shall be at a depth less than *three feet* below the level of the surface of the ground adjoining the grave.

[(*y*) Provided that where the coffin is constructed of a perishable material and the soil is of a suitable and friable character, the coffin may be placed at such a depth that no part thereof shall be at a depth less than *two feet* below the level of the surface of the ground immediately adjoining the grave.]

4. A person shall not in the cemetery cause a body to be buried in a grave in which an interment has already taken place unless the coffin containing the body is effectually separated from any other coffin already placed and remaining in the grave by means of a layer of earth not less than *six inches* in thickness.

5. Where in the cemetery any grave in which an interment has already taken place is re-opened for the purpose of making another interment therein, a person shall not disturb any human remains interred therein or remove therefrom any soil which is offensive.

(*u*) "Mayor, Aldermen, and Burgesses of the Borough of , acting by the Council"; *or*, "Urban (*or* "Rural) District Council of " ; as the case may be.

(*x*) Indicate the situation of the cemetery.

(*y*) This paragraph may be omitted if not required.

6. Every person who, in the cemetery, buries a body in a vault shall, within a period of *twenty-four hours* after the deposit in the vault of the coffin containing the body, cause the coffin to be wholly and permanently embedded in and covered with a layer or layers of good cement concrete, not less in any part than *six inches* in thickness, or to be wholly and permanently enclosed in a separate cell or receptacle which shall be constructed of slate or stone flagging not less than *two inches* in thickness, properly jointed in cement, or of good brickwork in cement, and in such a manner as to prevent, as far as may be practicable, the escape of any noxious gas from the interior of the cell or receptacle.

7. Every person who, in the cemetery, buries a body in a grave in respect of which an exclusive right of burial has been granted by the Council shall, as soon as conveniently may be after the lapse of such a period as may reasonably suffice for the natural subsidence of the earth with which the grave has been filled up, cause the surface of the grave to be properly covered with fresh turf, or with any gravestone or monument which, in pursuance of any grant by the Council, may lawfully be erected or placed on the grave, or shall cause the surface of the grave to be planted with shrubs or with other suitable vegetation.

8. A person shall not, in the cemetery, by any violent or indecent behaviour, prevent, interrupt, or delay the decent and solemn burial of any body.

9. Every person who offends against any of the foregoing byelaws shall be liable for every such offence to a penalty of *five pounds*, and in the case of a continuing offence to a further penalty of *forty shillings* for each day after written notice of the offence from the Council.

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this byelaw.

10. Every person who, in the cemetery, buries a body in a grave, for which no exclusive right of burial has been granted, shall pay to the Council, as a charge for the use of the cemetery, a sum which shall be determined by such of the several regulations hereinafter contained as may be applicable to the circumstances of the case, that is to say:

For the burial—	*s.* *d.*
(a) Of the body of a stillborn child or of a person whose age at the time of death did not exceed one month	
(b) Of the body of a person whose age at the time of death exceeded one month, but did not exceed years	
(c) Of the body of a person whose age at the time of death exceeded years	

Repeal of Byelaws (*z*).

11. From and after the date of the confirmation of these byelaws, the byelaws with respect to the management of the cemetery and charges for the use of the same which were made by the

on the day of in the year one thousand hundred and , and which were confirmed by the Local Government Board on the day of in the year one thousand hundred and , shall be repealed.

(*z*) If there are no byelaws in force upon the subject of this series the fact should be stated, and the repeal clause struck out.

CHOLERA, YELLOW FEVER AND PLAGUE.

In addition to the Circulars, Orders and Regulations here printed in full it may be useful to refer to the following official publications :—

Cholera.—Memorandum as to Precautions against Infection (August 26th, 1892).

Plague.—General Memorandum on, and Directions for obtaining and forwarding for Bacteriological Examination material from suspected Plague Cases (November, 1910); Circular as to Ship-borne Rats and Plague (April, 1901).

Appendix II.

REGULATIONS AS TO CHOLERA, YELLOW FEVER, AND PLAGUE.

(SHIPS ARRIVING FROM FOREIGN PORTS.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
9th September, 1907.

SIR,—I am directed by the Local Government Board to state that they have had under consideration questions arising out of the International Sanitary Convention of Paris, 1903, to which this country is a party, and that they have deemed it desirable to rescind the existing regulations as to cholera, yellow fever, and plague prescribed by their Orders of the 9th November, 1896, and the 24th December, 1902, and to issue further regulations on this subject. The regulations are made in pursuance of section 130 of the Public Health Act, 1875, as amended and extended by the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health Act, 1904, with a view to the treatment of persons affected with cholera, yellow fever, or plague, and for preventing the spread of the disease both on land and water. Two copies of the new Order are enclosed.

The regulations have been so framed as to apply to every port sanitary authority (other than the Bristol, Gloucester, Harwich, Ipswich, Liverpool, and Manchester Port Sanitary Authorities), as well as to every council of a municipal borough or other urban district and to every rural district council, whose borough or district includes or abuts on any part of a Customs port, which part is not within the jurisdiction of a port sanitary authority; and in the Order and in this circular the expression "the sanitary authority" includes each of the port sanitary authorities (other than those excepted) and each of the councils above referred to.

The majority of the provisions contained in the regulations hitherto in force are reproduced in the new regulations, and it does not appear necessary to set them out in detail in the present circular. But it is desirable to give the following explanation of the general effect of the additions and alterations which, as indicated above, have been introduced chiefly for the purpose of securing the observance of principles embodied in the Paris Convention of 1903.

As the sanitary authority are aware the main principles on which the regulations in this matter have proceeded are that a report with regard to infected vessels arriving from foreign ports should be made by the officers of Customs to the sanitary authority of the place of arrival; that infected vessels should be temporarily detained pending visitation by the medical officer of health of the place; and that, after visitation by the medical officer of health of such vessels, or of any other vessels to which suspicion of infection attaches, the measures indicated by the regulations should be taken. Such measures have included, according to circumstances, the further detention of the vessel, the removal of persons suffering or suspected to be suffering from plague, cholera, or yellow fever, the adoption of steps to free the vessel from causes of infection, and such other action as is expedient for the purpose of tracing the further movements of persons allowed to leave the vessel.

Some modifications of the regulations have now been made in regard to most of the matters above mentioned.

In relation to vessels arriving from foreign ports a new classification is adopted. The term "infected ship" is limited to a ship on which there is actually on board at the time of arrival a case of cholera, yellow fever, or plague, or on which there has been a case of cholera or plague within seven days before arrival or a case of yellow fever within eighteen days before arrival. At the same time the term "suspected ship" is used as applying to a ship on which there has been a case of cholera or plague more than seven days before the arrival of the ship or a case of yellow fever more than eighteen days before arrival, whether the case has occurred in the port of departure or in another port in the course of the voyage, or at any time during the voyage, and on which no fresh case of cholera or plague has occurred within the seven days or of yellow fever within the eighteen days.

Visitations by officers of Customs and

The action of officers of Customs under Article 2, *et seq.*, of the Order is in the first instance to extend both to infected and suspected ships. The question

Appendix II.

which the officer of Customs is to address to the master or surgeon of the ship and which has to be answered in the form set forth in Article 2, is designed to bring out the actual facts as to the occurrence of cases or suspected cases of cholera, yellow fever, or plague upon the ship. The officer of Customs is to give notice of the cause of the temporary detention of any ship to the sanitary authority. It will be observed that under Article 2 (2) of the new regulations a ship may be detained if the officer of Customs, although not satisfied that a ship is "infected" or "suspected," has reason to suppose that the ship has come from, or has during the voyage called at, a port infected with cholera, yellow fever, or plague.

— detention of ships.

In this connection the Board would point out that, in order to secure efficiency in applying the last-mentioned provision and to avoid unnecessary interference with shipping, it is important that the medical officer of health of the sanitary authority should keep himself informed as to the ports that may be infected and should advise (*a*) the local officers of Customs as to the ports from which it is anticipated that ships liable to detention by those officers under Article 2 (2) might come, or at which they might have called.

Detention in ships of persons aboard.

If a ship is certified to be "infected," the regulation in Article 15 (except as regards any person certified to be suffering from cholera, yellow fever, or plague, or from any illness which may prove to be cholera, yellow fever, or plague) prohibits the landing of any person who is on board, unless he satisfies the medical officer of health as to his name, intended place of destination, and intended address at such place. It will be observed that under this article the regulation comes into forec automatically in the case of an "infected" ship. As regards, however, a "suspected" ship and certain other ships, a similar provision under Articles 20 and 21 does not come into operation unless the medical officer of health gives a certificate declaring it desirable that the provision should take effect, with a view to checking the introduction or spread of cholera, or yellow fever, or plague.

In either case, when the provision is in force, the permission to land can only be given after the medical officer of health has been satisfied as to the person's name, intended place of destination, and intended address at that place; and even then the permission is coupled with an obligation that if any person who has stated his intended destination and intended address arrives at a different destination or address within five days after landing, he is forthwith to notify his destination and address to the medical officer of health or the local authority of the district in which the place of actual destination or address is situate. A person who fails to comply with this obligation will be liable to a penalty for infringement of the regulations.

The attainment of the effective safeguarding of the public health, aimed at by these provisions, will, as it seems to the Board, be materially furthered if any person permitted to land be made fully acquainted with the conditions under which the permission is granted; and accordingly it is suggested that the sanitary authority should furnish every such person with a short printed statement of the obligation imposed on him under Article 15 or Article 21 as the case may be, and of the penalty to which he becomes liable in the event of his failure to comply with the obligation.

Disinfection of ships.

It will be observed that under Article 19 of the new regulations the measures of disinfection that may be applied to an "infected" or a "suspected" ship, as apart from articles in it, are restricted to instances in which the infection is due to cholera or plague, and that they are to be confined to those parts of the ship which have been used as quarters by a person suffering from cholera or plague, or which, in the opinion of the medical officer of health, are infected with either of these diseases.

The disinfection or destruction of articles on board the ship, under Articles 18 and 19, is also restricted to those which may be infected with cholera or plague.

Precautions for the prevention of the spread of cholera.

Certain proceedings for dealing with bilge water and water ballast, and also for substituting for any existing supply of water a proper supply of water for drinking and cooking purposes, were under the former regulations to be taken when requisite in the case of yellow fever and plague as well as in the case of

(*a*) As to this see now circular of October 17th, 1908, *post*, p. 2229.

Appendix II.

cholera; under Article 22 these proceedings are now made available only in those instances where cholera is in question.

Precautions for the prevention of the spread of plague.

New provisions have been made in Articles 23 and 24 prescribing the procedure to be followed with a view to prevent the transmission of plague by rats on board ship, and the escape from the ship to shore of rats that may be infected with plague. With a view to obviating the first of these dangers, rats are in all cases to be destroyed when the ship is infected with plague, or when rats in the ship are infected with that disease. In the case of a ship which is not infected but is a suspected ship by reason of plague this procedure is not obligatory, except where the medical officer of health requires it to be followed.

Where a ship is neither infected nor suspected by reason of plague, but has come from, or has during the voyage called at, a port infected with plague, the danger from rats is comparatively small. Nevertheless, in the case of such a ship where the medical officer of health is satisfied that measures for the destruction of rats in the ship are necessary and certifies accordingly, these measures are to be applied, and the cost will be borne, not by the master of the ship, but by the sanitary authority.

With a view to averting danger that might ensue from the escape to shore of rats on board a ship which is infected or suspected by reason of plague, or which has come from or called at a port infected with plague or in which there are rats either infected with plague or affected by an unusual mortality, such precautions are to be taken for effectually stopping the access of rats from the ship to the shore as the medical officer of health may deem reasonably necessary.

Precautions for the prevention of the spread of yellow fever.

In view of the part now known to be taken by a certain species of mosquito in the transmission of yellow fever to man, a new provision is made in Article 25 enabling the medical officer of health to give a certificate requiring the taking of measures intended to secure the destruction of mosquitoes and their larvæ on board ship subject to the conditions set out in that article.

Execution of work by sanitary authority and recovery of the cost.

By the provisions of Article 28 the sanitary authority are placed under the obligation to do any such work as is therein specified, at the request of and in substitution for the master of a ship. They may, if they think fit, recover from the master of the ship the cost of the work so done; but they may not derive any profit by reason of the sum charged, and the amount recoverable may not in relation to any piece of work exceed £20.

Purchase of copies of Order and circular.

The Order and this circular will be placed on sale, so that copies may shortly be obtained either directly or through any bookseller from Messrs. Wyman and Sons, Limited, Fetter Lane, E.C.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary*.

To the Clerk to the Port Sanitary Authority, or
The Town Clerk, or
The Clerk to the Urban District Council, or
the Rural District Council.

CHOLERA, YELLOW FEVER AND PLAGUE REGULATIONS.

(SHIPS ARRIVING FROM FOREIGN PORTS.)

TO ALL PORT SANITARY AUTHORITIES other than the Bristol, Gloucester, Harwich, Ipswich, Liverpool, and Manchester Port Sanitary Authorities; To all other Sanitary Authorities as herein defined; To the King's Harbour Masters of Dockyard Ports; To all officers of Customs; To all Medical Officers of Health of the Sanitary Authorities aforesaid; To all Masters of Ships; To all Pilots; And to all others whom it may concern.

WHEREAS [*here are recited s.* 130 *of the P. H. A.*, 1875 (ante, *p.* 233), *as amended by the P. H. A.*, 1896 (ante, *p.* 1074), *s.* 1 *of the latter Act, and s.* 1 (1) *of the P. H. A.*, 1904 (ante, *p.* 1092)].

And whereas by an Order dated the 9th day of November, 1896, we made

regulations with a view to the treatment of persons affected with cholera, yellow fever, or plague, and for preventing the spread of any of those diseases, and by an Order dated the 24th day of December, 1902, we made regulations with respect to the signals to be hoisted by ships infected with cholera, yellow fever, or plague, and it is expedient that the said Orders should be revoked, and that regulations should be made as hereinafter mentioned ;

And whereas the Commissioners of His Majesty's Customs and the Board of Trade have respectively signified their consent to the said Regulations so far as they respectively apply to the officers of Customs and to signals, and the said Regulations, so far as they apply to any matter in respect of which we are empowered by the Public Health Act, 1904, to make regulations, have been made after consultation with the Board of Trade :

Now therefore, we, the Local Government Board, do hereby revoke the aforesaid Orders, except in so far as they may apply to any proceedings now pending, and we do, by this our Order, and in the exercise of the powers conferred on us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health Act, 1904, and every other power enabling us in that behalf, make the following regulations, and declare that the said regulations shall apply and have effect throughout England and Wales, except as regards the port sanitary districts of Bristol and Gloucester, Harwich and Ipswich, and Liverpool and Manchester, and shall be enforced and executed by the authorities and officers herein-after mentioned :—

PART I.

ART. 1. In this Order—

The expression "ship" includes a vessel or boat ;

The expression "foreign port" means a port or place situate elsewhere than in the United Kingdom, the Channel Islands, and the Isle of Man ;

The expression "officer of Customs" includes any person acting under the authority of the Commissioners of His Majesty's Customs ;

The expression "master," used in relation to a ship, includes the officer, pilot, or other person for the time being in charge or command of the ship ;

The expression "sanitary authority" means every port sanitary authority, and every council of a municipal borough or other urban district, and every rural district council whose borough or district includes or abuts on any part of a Customs port, which part is not within the jurisdiction of a port sanitary authority ;

The expression "local authority" means a council of a municipal borough or other urban district or a rural district council, and in the administrative County of London a council of a metropolitan borough, or the common council of the City of London ;

The expression "medical officer of health" includes any duly qualified medical practitioner appointed or employed by a sanitary authority to act in the execution of this Order ;

The expression "infected ship" means a ship which at the time of its arrival from a foreign port has on board a case of cholera, yellow fever, or plague, or which has had on board a case of cholera or plague within a period of seven days, or of yellow fever within a period of eighteen days, prior to that time ;

The expression "suspected ship" means a ship which has had on board during the voyage, or during the stay of the ship in the port of departure or in a port in the course of the voyage a case of cholera, yellow fever, or plague, but which has not had on board a fresh case of cholera or plague within a period of seven days, or of yellow fever within a period of eighteen days, prior to the time of its arrival from a foreign port.

PART II.

ART. 2. (*b*)—(1) The officer of Customs who visits a ship on its arrival from a foreign port shall ascertain, so far as possible, whether the ship is an

(*b*) As to this article, see Circular of October 17th, 1908, *post*, p. 2229.

Appendix II. infected ship or a suspected ship, or whether the ship has come from, or has during the voyage called at, a port infected with cholera, yellow fever, or plague, and with that object, shall require the master of the ship or the surgeon, if the ship carries a surgeon, to state whether there is or has been on board during the voyage any case or suspected case of cholera, yellow fever, or plague, or of any other fever or sickness, and if he have any reason to suppose that the ship is an infected ship or a suspected ship or has come from or has, during the voyage, called at any port infected with cholera, yellow fever, or plague, the officer of Customs shall require the master or the surgeon, as the case may be, to give (in writing under his hand and in the form hereunto appended or in the form to the like effect) a true answer to the following question :—

Question.—Has any case or suspected case of
cholera,
yellow fever, or
plague
occurred in the ship , of which you are , during the voyage from , or during the stay of the ship in that port or in any other port in the course of the voyage ?

Answer.— cases or suspected cases of occurred on board the during the voyage from [*or* during the stay of the ship in the port of];

or

No case or suspected case of cholera, yellow fever, or plague occurred on board the during the voyage from , or during the stay of the ship in that port or in any other port in the course of the voyage.

Signed ,
Master [*or* Surgeon] of the .

(2) The officer of Customs who visits a ship on its arrival from a foreign port shall, if he find, or have reason to suppose, that the ship is an infected ship or a suspected ship, and may, if he find or have reason to suppose that the ship has come from, or has, during the voyage, called at a port infected with cholera, yellow fever, or plague, detain the ship, and order the master forthwith to moor or anchor it in such position as the officer of Customs directs ; and thereupon the master shall forthwith moor or anchor the ship accordingly.

ART. 3. No person (other than an officer of Customs or a person acting in the execution of this Order) shall leave a ship while it is detained by the officer of Customs in pursuance of subdivision (2) of Article 2.

ART. 4. The officer of Customs who detains a ship in pursuance of subdivision (2) of Article 2 shall forthwith give notice thereof, and of the cause of detention, to the sanitary authority of the place where the ship is lying.

ART. 5. The detention of a ship by the officer of Customs in pursuance of subdivision (2) of Article 2 shall cease as soon as the ship has been duly visited and examined by the medical officer of health ; or, if the ship, upon examination by the medical officer of health, be found to be an infected ship or a suspected ship, as soon as it has been moored or anchored in pursuance of Article 10 :

Provided that, if the examination be not commenced within twelve hours after the ship has been moored or anchored in pursuance of subdivision (2) of Article 2, the ship shall, on the expiration of the said twelve hours, be released from detention.

PART III.

ART. 6. Every port sanitary authority and every other sanitary authority within whose district persons are likely to be landed from any ship coming from a foreign port shall, with the approval of the chief officer of Customs of the port, fix some place where the ship may be moored or anchored for a purpose of Article 10, and shall make provision for the reception of patients removed under Articles 13 and 14, as persons certified by the medical officer

of health to be suffering from cholera, yellow fever, or plague, or certified by the medical officer of health to be suffering from an illness which, in his opinion, may prove to be cholera, yellow fever, or plague. The place to be fixed as aforesaid, where a ship may be moored or anchored for the purpose of Article 10, shall be some place within the jurisdiction or district of the sanitary authority, unless we otherwise consent; in which case the place so fixed shall, for the purposes of this Order, be deemed to be within that jurisdiction or district.

Provided that, in the case of a dockyard port for which a king's harbour master has been appointed, the place where a ship shall be moored or anchored for the purpose of Article 10 shall from time to time be fixed by the port sanitary authority with the approval of the King's harbour master, instead of with that of the chief officer of Customs of the port.

Provided also, that where, in pursuance of the above-cited Order of the ninth day of November, one thousand eight hundred and ninety-six, or of any Order by the said Order revoked, or of any consent given by us in pursuance of any of the said Orders, places have been fixed for the mooring or anchoring of ships for the purposes of the regulations by this Order revoked, such places shall be deemed to have been so fixed in pursuance of and for the purposes of this Order.

ART. 7. The sanitary authority, on notice of the detention of the ship being given to them by an officer of Customs, under Article 4, shall forthwith cause the ship to be visited and examined by their medical officer of health for the purpose of ascertaining whether the ship is an infected ship or a suspected ship.

ART. 8. The medical officer of health, if he have reason to suppose that a ship coming or being within the jurisdiction or district of the sanitary authority, whether the ship has or has not been visited and examined by the officer of Customs, is an infected ship or a suspected ship, shall, or, if he have reason to suppose that the ship has come from, or has, during the voyage, called at a port infected with cholera, yellow fever, or plague, may, visit and examine the ship for the purpose of ascertaining whether it is an infected ship or a suspected ship; and may make the like visit and examination in the case of a ship coming or being within the jurisdiction of the sanitary authority which has come from, or has, during the voyage, called at a port infected with cholera, yellow fever, or plague. The master of any such ship shall permit the ship to be so visited and examined.

The master of any such ship shall also, on being required so to do by the medical officer of health, cause the ship to be brought to, and, if necessary, moored or anchored in some convenient place while it is visited and examined; but due regard shall be had to the safety of the ship and to the convenience of navigation.

ART. 9. If the medical officer of health on making an examination of a ship under Article 7 or under Article 8 be of opinion that the ship is an infected ship or a suspected ship, he shall forthwith give a certificate in duplicate in the following form, or to the like effect, and shall deliver one copy to the master, and retain the other copy or transmit it to the sanitary authority. He shall also give to us information as to the arrival of the ship, and such other particulars as we may require (*c*).

Certificate.

day of , 19 .

DISTRICT [*or* TOWN] COUNCIL,
or
PORT SANITARY AUTHORITY.

I hereby certify that I have examined the ship of , now lying in the Port of [*or detained at*], and that I find that the said

(*c*) A form for giving such information and particulars has been prepared by the Board (Circular of May 1st, 1908).

Appendix II. ship is an infected ship *or* a suspected ship by reason of cholera, *or* yellow fever, *or* plague.

Medical Officer of Health [*or* Medical Practitioner appointed or employed by the Sanitary Authority].

NOTE.—The expression "infected ship" means a ship which at the time of its arrival from a foreign port has on board a case of cholera, yellow fever, or plague, or which has had on board a case of cholera or plague within a period of seven days, or of yellow fever, within a period of eighteen days, prior to that time. The expression "suspected ship" means a ship which has had on board during the voyage or during the stay of the ship in the port of departure or in a port in the course of the voyage a case of cholera, yellow fever, or plague, but which has not had on board a fresh case of cholera or plague within a period of seven days or of yellow fever within a period of eighteen days prior to the time of its arrival from a foreign port.

ART. 10. The master of any ship so certified to be an infected ship or a suspected ship shall as soon as possible moor or anchor the ship at the place fixed for that purpose under Article 6, and the ship shall remain there until the requirements of this Order have been duly fulfilled.

ART. 11. No person (other than an officer of Customs or a person acting in the execution of this Order) shall leave a ship moored or anchored in pursuance of Article 10 until the examination hereinafter mentioned has been made.

ART. 12. The medical officer of health shall, as soon as possible after a ship moored or anchored in pursuance of Article 10 has been certified to be an infected ship or a suspected ship, examine every person on board the ship, and in the case of any person suffering from cholera, yellow fever, or plague, or from any illness which, in the opinion of the medical officer of health, may prove to be cholera, yellow fever, or plague, shall certify accordingly.

ART. 13. Every person certified by the medical officer of health to be suffering from cholera, yellow fever, or plague shall be removed, if his condition admit of removal, to some hospital or other suitable place appointed for that purpose by the sanitary authority; and a person so removed shall not leave the hospital or place until the medical officer of health has certified that the person is free from the said disease.

If a person so certified to be suffering from cholera, yellow fever, or plague cannot be removed, the ship shall remain subject, for the purposes of this Order, to the control of the medical officer of health; and the person shall not be removed from or leave the ship, except with the consent in writing of the medical officer of health.

ART. 14. A person certified by the medical officer of health to be suffering from any illness which, in the opinion of that officer, may prove to be cholera, yellow fever, or plague may either be detained on board the ship for a period not exceeding two days, or may be taken to some hospital or other suitable place appointed for that purpose by the sanitary authority, and detained there, for a like period, in order that it may be ascertained whether the illness is or is not cholera, yellow fever, or plague.

If any such person, while so detained, be certified by the medical officer of health to be suffering from cholera, yellow fever, or plague the provisions of Article 13 shall apply.

ART. 15. A person who is on board a ship certified to be an infected ship, and who has not been certified as required by Article 12, shall not be permitted to land unless he satisfy the medical officer of health as to his name, intended place of destination, and intended address at the said place of destination.

The name, intended place of destination, and address shall forthwith be given by the medical officer of health to the clerk to the sanitary authority, and the said clerk shall thereupon transmit the particulars to the local authority of the district in which the intended place of destination is situate.

Every such person who, within five days after landing, arrives at any place of destination or address other than such place or address as aforesaid, shall forthwith upon his arrival notify in writing his place of destination and address to the medical officer of health of the sanitary authority, or to the local authority, of the district in which the place of actual destination or address is situate.

ART. 16. The medical officer of health shall, in the case of every ship certified to be an infected ship or a suspected ship, give such directions, and take such steps as may appear to him to be necessary, for preventing the spread of infection, and the master of the ship shall forthwith carry into execution all such directions as are so given to him.

ART. 17. In the event of death from cholera, yellow fever, or plague taking place on board a ship detained under Article 10, the master shall, as directed by the sanitary authority or the medical officer of health, either cause the dead body to be taken out to sea, and committed to the deep, properly loaded to prevent its rising, or shall deliver the dead body into the charge of the sanitary authority, who shall thereupon cause it to be otherwise lawfully and properly disposed of.

ART. 18. The master shall cause any clothing or bedding or any other article of personal use which is likely to retain infection, and which has been used by any person who has suffered from cholera or plague on board a ship detained under Article 10, or who, having left the ship, has suffered from cholera or plague during the stay of the ship in any port, to be disinfected or destroyed; and if the master has neglected to do so before the ship arrives in port, he shall forthwith, upon the direction of the sanitary authority or the medical officer of health, cause the aforesaid clothing, bedding, or other article to be disinfected or destroyed, as the case requires.

ART. 19. The master shall cause those parts of a ship detained under Article 10 which have been used as quarters by a person suffering from cholera or plague, or which, in the opinion of the medical officer of health, are infected with cholera or plague to be disinfected.

The master shall also cause every article on board which is not included among those mentioned in Article 18, and which, in the opinion of the medical officer of health, may be infected with cholera or plague to be disinfected or destroyed, according to the directions of the medical officer of health.

ART. 20. Where a ship is not certified to be an infected ship, but is certified to be a suspected ship, or where a ship has on board any person who is certified by the medical officer of health to be suffering from an illness which, in the opinion of that officer, may prove to be cholera, yellow fever, or plague, or where a ship has come from or has, during the voyage, called at a port infected with cholera, yellow fever, or plague, or where a ship is one which has passengers on board who are in a filthy or otherwise unwholesome condition, or where a ship is one in which there are rats infected with plague, or in which there is or has been during the voyage an unusual mortality among rats, the medical officer of health may, if in his opinion it is desirable with a view to checking the introduction or spread of cholera, yellow fever, or plague, give a certificate in duplicate in the following form, or to the like effect, and shall deliver one to the master, and retain the other or transmit it to the sanitary authority.

Certificate.

day of 19 .

DISTRICT [*or* TOWN] COUNCIL,
or
PORT SANITARY AUTHORITY.

I hereby certify that I have examined the ship from , now in the Port of , and that the ship is a suspected ship by reason of cholera *or* yellow fever *or* plague, *or* the ship has on board a person or persons suffering from illness, which, in my opinion, may prove to be cholera, *or* yellow fever,

Appendix II. *or* plague, *or* the ship has come from or has, during the voyage, called at a port infected with cholera, *or* yellow fever, *or* plague, *or* the ship has passengers on board in a filthy or otherwise unwholesome condition, *or* the ship is one in which there are rats infected with plague, *or* the ship is one in which there is or has been during the voyage an unusual mortality among rats.

* And that, in my opinion, it is desirable with a view to checking the introduction or spread of cholera, *or* yellow fever, *or* plague, that the persons on board the ship should not be allowed to land unless they satisfy me as to their names, places of destination, and addresses at those places.

Medical Officer of Health [*or* Medical Practitioner appointed or employed by the Sanitary Authority].

NOTE.—The expression "suspected ship" means a ship which has had on board during the voyage or during the stay of the ship in the port of departure or in a port in the course of the voyage a case of cholera, yellow fever, or plague, but which has not had on board a fresh case of cholera or plague, within a period of seven days, or of yellow fever, within a period of eighteen days, prior to the time of its arrival from a foreign port. Where, in the opinion of the medical officer of health, it is necessary or desirable to render Article XXI. applicable, the passage marked with an asterisk should always form part of the certificate.

ART. 21. When a certificate has been given, in pursuance of Article 20, a person on board the ship shall not leave or be allowed to leave the ship unless he satisfy the medical officer of health as to his name, intended place of destination, and intended address at that place.

The name, intended place of destination, and address shall forthwith be given by the medical officer of health to the clerk to the sanitary authority, and the said clerk shall thereupon transmit the particulars to the local authority of the district in which the intended place of destination is situate.

Every such person who, within five days after landing, arrives at any place of destination or address other than such place or address as aforesaid shall forthwith, upon his arrival, notify in writing his place of destination and address to the medical officer of health of the sanitary authority or to the local authority of the district in which the place of actual destination or address is situate.

ART. 22. Where a ship coming or being within the jurisdiction of the sanitary authority has been certified by the medical officer of health to be an infected ship or a suspected ship by reason of cholera, or where the medical officer of health has ascertained that a ship has come from or has, during the voyage, called at a port infected with cholera, he may direct all bilge water and water ballast to be pumped out in some suitable place before the ship enters any dock or basin:

Provided that, in every case where there is reasonable cause to apprehend that the ship may be endangered by the removal of the water ballast, the medical officer of health may cause any tank or other receptacle containing the water ballast to be sealed, and thenceforward, so long as the ship remains within the jurisdiction of the sanitary authority, no person shall without the permission of the medical officer of health break or remove the seal, or discharge or remove from the tank or receptacle any part of the water ballast.

On the sanitary authority providing a proper supply of water for drinking and cooking purposes for persons on board any such ship, the medical officer of health may direct all casks or tanks on board the ship containing water for the use of those persons to be emptied and cleansed, and the master shall cause the said direction to be carried into effect.

ART. 23.—(1) The master of a ship certified to be an infected ship by reason of plague shall, under the direction and to the satisfaction of the medical officer of health, and at and within such time as the medical officer of health by a requisition in writing addressed to the master prescribes, employ suitable means for the effectual destruction of the rats in the ship.

(2) The master of a ship certified to be a suspected ship by reason of plague shall, if the medical officer of health make a requisition to that effect, employ, by and under the direction and to the satisfaction of the medical officer of

health, and at and within such time as the medical officer of health by his requisition prescribes, suitable means for the effectual destruction of the rats in the ship.

(3) Where the medical officer of health is satisfied and certifies in writing that compliance with the requirements of this subdivision is necessary as a precaution against the introduction or spread of plague, the master of a ship which, though not certified to be an infected ship or a suspected ship by reason of plague, has come from or has, during the voyage, called at a port infected with plague, shall, at and within such time as the medical officer of health by his certificate prescribes, and under the direction and to the satisfaction of the medical officer of health, employ suitable means for the effectual destruction of the rats in the ship.

The sanitary authority shall repay all expenses which the medical officer of health may certify in writing to have been reasonably incurred by the master for the purpose of compliance with the requirements of this sub-division.

(4) Every requisition or certificate of the medical officer of health for the purposes of this article shall be in duplicate, and one copy shall be delivered by the medical officer of health to the master and the other copy shall be retained by the medical officer of health, or shall be transmitted by him to the sanitary authority.

ART. 24.—(1) Where the medical officer of health certifies in writing that a rat in a ship is infected with plague, the master of the ship shall, at and within such time as the medical officer of health by his certificate prescribes, and under the direction and to the satisfaction of the medical officer of health, employ suitable means for the effectual destruction of the rats in the ship.

(2) The master of a ship which, by reason of plague, is an infected ship, or a suspected ship, or which has come from or has, during the voyage, called at a port infected with plague, or in which there are rats infected with plague, or in which there is or has been during the voyage an unusual mortality among rats shall, under the direction and to the satisfaction of the medical officer of health, take all such precautions or employ all such means for effectually stopping the access of rats from the ship to the shore, as in the opinion of the medical officer of health are measures reasonably necessary for the prevention of danger arising to public health from the ship.

(3) Every certificate of the medical officer of health for the purposes of this article shall be in duplicate, and one copy shall be delivered by the medical officer of health to the master and the other copy shall be retained by the medical officer of health, or shall be transmitted by him to the sanitary authority.

ART. 25.—(1) Where the medical officer of health certifies in writing that compliance with the requirements of this subdivision is necessary as a precaution against the introduction or spread of yellow fever, the master of a ship which has been certified to be an infected ship or a suspected ship by reason of yellow fever, or which has come from or has, during the voyage, called at a port infected with yellow fever, shall, under the direction and to the satisfaction of the medical officer of health, employ suitable means for the effectual destruction of the mosquitoes and of the larvæ of mosquitoes in the ship.

The sanitary authority shall repay all expenses which the medical officer of health may certify in writing to have been reasonably incurred by the master of a ship, which has not been certified to be an infected ship or a suspected ship by reason of yellow fever, for the purpose of compliance with the requirements of this sub-division.

(2) Every certificate of the medical officer of health for the purpose of this article shall be in duplicate, and one copy shall be delivered by the medical officer of health to the master, and the other copy shall be retained by the medical officer of health, or shall be transmitted by him to the sanitary authority.

ART. 26. The master of a ship, or any other person, shall answer truly all such questions put to him by and give all such information to any officer of Customs or medical officer of health as are necessary for any purpose of this

Appendix II.

Order; and a person who is required in pursuance of this Order to give to the medical officer of health or to notify to any local authority the name and intended place of destination and address of the said person shall not knowingly give or notify a false or fictitious name, place of destination or address, and shall not refuse or neglect to give or notify as aforesaid the true name, intended place of destination and address of the said person.

ART. 27.—(1) The sanitary authority may appoint one or more legally qualified medical practitioners to act in the execution of this Order, either in place of or as an assistant or assistants to the medical officer of health, and may pay the said practitioner or practitioners reasonable remuneration for his or their services.

(2) The sanitary authority, if we so require, shall appoint a legally qualified medical practitioner to act in the execution of this Order in the place of the medical officer of health.

The sanitary authority shall pay the medical practitioner appointed in pursuance of this subdivision such remuneration for his services as we direct.

ART. 28.—(1) Where the master of a ship is required by or in pursuance of this Order to cause any clothing, bedding, or other article to be disinfected or destroyed, to cause any parts of the ship to be disinfected, to cause any casks or tanks containing water to be emptied and cleansed, or to employ suitable means for the effectual destruction of rats, or mosquitoes, or the larvæ of mosquitoes, the sanitary authority shall at the request of, in substitution for, and, if they think fit, at the cost of the master, cause anything to be done in compliance with any such requirement as aforesaid.

In that case the sanitary authority shall, on the completion of the work, and the payment to the sanitary authority of the authorised charge, furnish the master, if he so desire, with a certificate under the seal of the sanitary authority to the effect that there has been compliance with any such requirement as aforesaid so far as regards the particular matter mentioned in the certificate.

Thenceforth, for the purposes of this Order, and so far as regards the particular matter aforesaid, the master shall be deemed to have complied with every requirement of or in pursuance of the Order.

For the purposes of this subdivision the expression "the authorised charge" means, in relation to any work undertaken by the sanitary authority, such reasonable sum as, to the exclusion of any charge or claim in respect of profit, represents the actual or estimated cost of the work to the sanitary authority, and as does not in any case exceed the sum of twenty pounds, but the sanitary authority may, if they think fit, require the authorised charge or a part of the authorised charge to be paid to or deposited with them before any such work as aforesaid is begun.

(2) Every charge authorised by subdivision (1) of this Article shall be recoverable by the sanitary authority as expenses or demands within the meaning of section 251 or of section 261 of the Public Health Act, 1875, and those sections and any enactments referred to in or applied by those sections shall apply and have effect for the recovery of the said expenses as if the said sections and enactments were herein re-enacted and in terms made applicable to the case.

PART IV.

ART. 29.—The master of an infected ship or of a suspected ship shall, when the ship is within three miles of the coast of any part of England and Wales, or is within the limits of a port, cause to be hoisted—

(i.) At the masthead or where it can be best seen, during the whole of the time between sunrise and sunset, a day signal, consisting of a large flag of yellow and black borne quarterly; or

(ii.) At the peak or other conspicuous place where it can be best seen, and at a height of not less than twenty feet above the hull of the ship, during the whole of the time between sunset and sunrise, a night signal, consisting of three lights, which shall be arranged, at a distance of not less than six feet apart, in the form of an equilateral triangle, and of which the light at the apex of the triangle shall be white, and the

other lights at the ends of the base of the triangle shall be red in colour.

No person (other than an officer of Customs or a person acting in the execution of this Order) shall leave any such ship until after such visit of the officer of Customs as is mentioned in Article 2, or until after the visit of the medical officer of health in pursuance of Article 8.

PART V.

ART. 30.—Nothing in this Order shall render liable to detention, disinfection, or destruction any article forming part of any mail (other than a parcel mail) conveyed under the authority of the Postmaster-General, or of the postal administration of any Foreign Government, or shall prejudicially affect the delivery in due course of any such mail (other than a parcel mail) to the Post Office in accordance with the provisions of the Post Office Acts.

Given under the Seal of Office of the Local Government Board, this (L.S.) ninth day of September, in the year one thousand nine hundred and seven.

JOHN BURNS, *President.*

S. B. PROVIS, *Secretary.*

NOTICE.—The P. H. A., 1896, provides by sub-section (3) of section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under section one hundred and thirty of the P. H. A., 1875, or in pursuance of that section as extended to London by the Public Health (London) Act, 1891, and as amended by the P. H. A., 1896, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues. The power of making regulations under the P. H. A., 1896, and the enactments mentioned in that Act, is enlarged by the P. H. A., 1904.

CIRCULAR AS TO THE FOREGOING REGULATIONS.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
October 17th, 1908.

SIR,—I am directed by the Local Government Board to advert to Article II. (2) of their General Order of the 9th September, 1907, relating to cholera, yellow fever and plague on ships arriving from foreign ports, under which a ship may be detained by the officer of Customs for examination by the medical officer of health of the sanitary authority, if the officer of Customs, although he does not find or has no reason to suppose that the ship is "infected" or "suspected" within the meaning of the Order, finds or has reason to suppose that the ship has come from, or has during the voyage called at, a port infected with any of the diseases referred to.

The Board stated in the Circular Letter which accompanied the Order that "it is important that the medical officer of health . . . should advise the local officers of Customs as to the ports from which it is anticipated that ships liable to detention by those officers under Article II. (2) might come, or at which they might have called." The Board have been in communication with the Commissioners of Customs with reference to the matter, and they find that it is necessary for the exercise of the power of detention conferred by the article that the medical officer of health should inform the local Customs officer of the date on which any particular port is believed to be infected, so that the ships coming from, or which have called at, that port on or after that date should be detained for examination by the medical officer of health.

The Board think that the information might be given in the following form :—

CHOLERA, YELLOW FEVER OR PLAGUE.

I have reason to believe that the port of   is infected with cholera (*or* yellow fever *or* plague *as the case may be*), and I am desirous that until further notice from me in writing, any ship leaving that port on or after the   day of   190(8), whether coming from such port, or having called

Appendix II. there during the voyage, may, on arrival at , be detained by an officer of Customs for examination by the medical officer of health.

Signed ,
Medical Officer of Health.

Dated .

To the Officer of Customs.

I am accordingly to request that the sanitary authority will direct their medical officer of health to adopt this procedure. He will of course take care to inform the customs officer in writing when he considers that the port referred to in the notice may cease to be regarded as infected, and consequently the need for detention of ships coming therefrom no longer exists. A copy of this circular is enclosed for the information of the medical officer of health.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary.*

To the Clerk to the Port Sanitary Authority, or
The Town Clerk, or
The Clerk to the Urban District Council, or
The Clerk to the Rural District Council.

REGULATIONS AS TO CHOLERA AND PLAGUE.

(OUTWARD BOUND AND COASTING SHIPS.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
9th September, 1907.

I.—OUTWARD BOUND SHIPS.

SIR,—I am directed by the Local Government Board to state that they have under consideration questions arising out of the International Sanitary Convention of Paris, 1903, to which this country is a party, and that they have deemed it desirable to issue an Order prescribing as regards Outward Bound Ships Regulations in pursuance of the powers conferred upon them by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health Act, 1904.

The regulations embodied in the Order provide for the taking of certain measures with the view of preventing the transmission to foreign countries of cholera or plague, whether through the medium of infected persons or things, or of rats in the case of plague, or of drinking water in the case of cholera, in the event of a district or part of a district in England or Wales becoming affected with one of those diseases.

The Order has been framed in four parts, and it seems to the Board to be desirable to make the following observations as to the provisions contained in each part.

Definitions.

As regards the definitions which are used in the regulations, it will be observed that in Part II. of the Order the expression "local authority" means every port sanitary authority and every town council, every other urban district council, and every rural district council, whose borough or district includes or abuts on any part of a Customs port, which part is not within the jurisdiction of a port sanitary authority, and that in Parts III. and IV. the expression means the common council of the city of London, the council of each metropolitan borough, the council of each municipal borough or other urban district, the council of each rural district, and each port sanitary authority.

Visitation and examination of outward bound ships.

Where an outward bound ship is in a district which is, or comprises an area affected with cholera or plague, the medical officer of health of the local authority, under the provisions of Article 5 may, in the exercise of his discretion, and, on the requisition of the master of the ship, must, visit the ship and examine the master, crew, and every other person aboard, and any clothing or bedding or other articles of personal use which, in the opinion of the medical

Appendix II.

officer of health, may have been exposed to infection. An option is, however, given to the medical officer of health by arrangement with the master of the ship to examine ashore the master, the members of the crew or any other persons intending to go aboard as passengers or otherwise. By Article 7 it is provided that if the medical officer of health is of opinion that the persons examined are not suffering from cholera or plague, or from any illness which may prove to be cholera or plague, and that the ship and clothing or bedding or articles above referred to are free from infection, he may (if the examination was made in the exercise of his discretion), and must (if the examination was made on the requisition of the master of the ship) give a certificate as mentioned in the Article. The Board anticipate that the granting of the certificate to a master of a ship may lead to the application at foreign ports of less stringent treatment than is likely to be applied in the absence of such a certificate.

Precautions for preventing the spread of infection.

By Article 8 provision is made for the removal to a hospital or other suitable place appointed for the purpose by the local authority of persons ascertained by the medical officer of health on his examination to be suffering from cholera or plague or from an illness which in his opinion may prove to be cholera or plague, and in this Article and in Articles 9 and 10 the measures to be taken by the medical officer of health and the master of the ship for preventing the spread of infection are prescribed.

Charges to be paid by masters of ships.

By Article 11 power is given to the local authority to fix the sum which the master of the ship may be required to pay to them or to the medical officer of health on their behalf before the certificate above referred to is given to the master. Such sum must not exceed the amount prescribed in the table of charges set out in the Article. It will be seen that the sum may be paid to the medical officer of health, but in that case it must be handed over by him to the local authority.

Specified articles.

Certain articles termed "Specified Articles" are defined in Part I. of the Order and in Part III. regulations are made for prohibiting except under certain conditions, the conveyance of any such articles out of a cholera-affected area or out of a plague-affected area with the object of being placed aboard an outward bound ship for the purpose of an outward voyage. These regulations have been so framed as to secure observance of the principles embodied in the Sanitary Convention of Paris above referred to.

Medical assistance and saving for mails.

In Part IV. provision is made for the appointment of one or more medical practitioners to act in the execution of the regulations and for their remuneration, and provision is also made for exempting articles forming part of certain mails from the operation of the regulations.

II.—COASTING SHIPS.

Another set of regulations is enclosed dealing with ships sailing from English or Welsh ports in areas affected with cholera or plague and sailing to other ports in the United Kingdom or in the Channel Islands or the Isle of Man. These regulations, which are on similar lines to those in Parts II. and IV. of the Order as to outward bound ships, will apply to the same authorities as those to which the provisions of Part II. of that Order are applicable. It will, however, be observed that only in the case where the medical officer of health has reason to suppose that a coasting ship is infected is it compulsory on him to visit the ship and examine the master and crew and other persons aboard.

Purchase of copies of Orders and circular.

The two Orders and this circular will be placed on sale, so that copies may shortly be obtained either directly or through any bookseller from Messrs. Wyman & Sons, Limited, Fetter Lane, E.C.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary.*

To the Clerk to the Port Sanitary Authority, or
The Town Clerk, or
The Clerk to the Urban District Council, or
the Rural District Council.

Appendix II.

CHOLERA AND PLAGUE REGULATIONS: OUTWARD BOUND SHIPS.

(September 9th, 1907.)

TO THE SEVERAL PORT SANITARY AUTHORITIES; To the Mayor, Aldermen, and Commons of the City of London; To the Councils of the several Metropolitan Boroughs; To the Councils of the several Municipal Boroughs and other Urban Districts; To the Councils of the several Rural Districts; To all Medical Officers of Health; To all Masters of Ships; And to all others whom it may concern.

WHEREAS [*here is recited the power to make regulations given by the P. H. A.*, 1896 (ante, *p.* 1074), *and the P. H. A.*, 1904, *section* 1 (1) (ante, *p.* 1092)].

And whereas by the first-mentioned enactment it is provided that the regulations shall not be made except after consultation with the Board of Trade;

And whereas it is expedient that regulations be made as hereinafter mentioned:

Now therefore, we, the Local Government Board, in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health Act, 1904, and of every other power enabling us in that behalf, do, by this our Order and after consultation with the Board of Trade, make the following regulations (hereinafter referred to as "the Regulations") with respect to cholera and plague, and declare that the regulations shall be enforced and executed by the authorities hereinafter mentioned:—

PART I.

Definitions.

ART. 1. Unless the context otherwise requires, the following expressions shall throughout the regulations have the meanings hereinafter respectively assigned to those expressions; namely—

The expression "cholera-affected area" or "plague-affected area" means an area which is within the United Kingdom, and which, for the time being, is affected with cholera or plague, as the case may be;

The expression "medical officer of health" includes any duly qualified medical practitioner appointed or employed to act in the execution of the regulations;

The expression "ship" includes a boat and any other description of vessel used in navigation;

The expression "master" used in relation to a ship includes any officer or person for the time being in charge or command of the ship;

The expression "outward bound ship" means a ship employed, or in course of preparation for employment, in trading or going beyond the United Kingdom, the Channel Islands, and the Isle of Man;

The expression "outward voyage" used in relation to an outward bound ship means a voyage extending to any place beyond the United Kingdom, the Channel Islands, and the Isle of Man; and

The expressions "infected" and "infection" mean respectively infected with cholera or plague, and infection from cholera or plague.

ART. 2. Unless the context otherwise requires, the following expressions shall, in Part II. of the regulations, have the meanings hereinafter respectively assigned to those expressions; namely—

The expression "local authority" means every port sanitary authority and every town council, every other urban district council, and every rural district council whose borough or district includes or abuts on any part of a Customs port, which part is not within the jurisdiction of a port sanitary authority; and

The expression "the district" means the district of a local authority.

ART. 3. Unless the context otherwise requires, the following expressions

shall, in Parts III. and IV. of the regulations, have the meanings hereinafter respectively assigned to those expressions; namely— **Appendix II.**

The expression "local authority" means the common council of the city of London, the council of each metropolitan borough, the council of each municipal borough or other urban district, the council of each rural district and each port sanitary authority;

The expression "the district" means the district of a local authority;

The expression "specified article" means—

(i.) In relation to a cholera-affected area or a plague-affected area—

(a) Body linen or clothing which has been in use, or

(b) Bedding which has been in use.

(ii.) In relation to a cholera-affected area—

(c) Rags, except such rags as are compressed and carried in bales as merchandise in bulk; and

(iii.) In relation to plague-affected area—

(d) Rags, including such rags as are compressed and carried in bales as merchandise in bulk.

The expression "local commodity" used in relation to a specified article means an article kept, placed, or deposited for any purpose of manufacture, trade, or industry within a cholera-affected area or a plague-affected area; and

The expression "owner" used in relation to a specified article includes any person who, as agent or otherwise, for the time being has or exercises such control over the specified article as would extend to the removal of the specified article from any part of England and Wales.

PART II.

Outward Bound Ships.

ART. 4. Part II. of the regulations shall apply and have effect in relation to the district of every local authority throughout England and Wales.

ART. 5. (1) Where the district is or comprises a cholera-affected area or a plague-affected area, the medical officer of health, in the exercise of his discretion, may at any time, and, on the requisition in writing of the master, shall, within twelve hours after receiving the said requisition, visit an outward bound ship and examine the master and crew and every other person who, as a passenger, or otherwise, is aboard the outward bound ship.

The medical officer of health may, and on the requisition of the master, shall also examine any clothing or bedding, or any other article of personal use which belongs to or is in use, or is intended for use by the master, a member of the crew, or any other person aboard the outward bound ship and which, in the opinion of the medical officer of health, may have been exposed to infection.

(2) The medical officer of health may, if he think fit, by arrangement with the master, examine ashore the master or any member of the crew, or any other person who, as a passenger, or in any other capacity intends to be carried in the outward bound ship, and every such examination shall be made within twelve hours before the time at which the master, member of the crew, or such other person as aforesaid is required to go aboard the outward bound ship, for the purpose of beginning an outward voyage.

(3) Where the master of an outward bound ship sends a requisition in writing to the medical officer of health for the purposes of this article he shall so send the requisition not less than twenty-four hours before beginning an outward voyage, and shall in the said requisition inform the medical officer of health of the time at which the outward bound ship will, for the purpose of the outward voyage, leave any dock, wharf, or place of embarkation within the district.

ART. 6. For the purpose of the examination by the medical officer of health of the master and crew of an outward bound ship, and of every other person who, as a passenger, or in any other capacity, is aboard the outward bound ship, or is about to go aboard, the master, every member of the crew, and every person as aforesaid, shall answer truly all such questions as may be put to

Appendix II. him, and give all such information as may be required from him by the medical officer of health.

ART. 7.—(1) Subject to the regulations, the medical officer of health, if on his examination as aforesaid he is of opinion that the several persons examined are not suffering from cholera or plague, or from any illness which, in the opinion of the medical officer of health, may prove to be cholera or plague, and that every part of the outward bound ship and any clothing or bedding or any other article of personal use which belongs to, or is in use, or is intended for use by any such person, is free from infection, may, if he has made the examination in the exercise of his discretion and shall, if he has made the examination on the requisition of the master, give a certificate in writing recording any matters which he deems necessary, and also, where the circumstances so require, the fact that, under his supervision, any part of the outward bound ship or any such clothing, bedding, or other article has been cleansed or disinfected, or the destruction of rats has been effected.

(2) Every certificate of the medical officer of health for the purposes of this article shall be in duplicate, and one copy shall be delivered by the medical officer of health to the master, and the other copy shall be retained by the medical officer of health, or shall be transmitted by him to the local authority.

ART. 8.—(1) If the medical officer of health on making such examination as aforesaid of the master and crew, or of any other person aboard, or about to go aboard, an outward bound ship, shall ascertain that any person so examined is suffering from cholera or plague, or from an illness which, in the opinion of the medical officer of health, may prove to be cholera or plague, the medical officer of health shall forthwith provide for the removal of the person to some hospital or other suitable place appointed for that purpose by the local authority. Every person so removed shall be subject to the rules prescribed by any regulations made by us under the Public Health Acts and in force in the district.

(2) The medical officer of health shall, as regards the outward bound ship, take such steps as appear to him to be necessary, for preventing the spread of infection, and the master shall for that purpose forthwith carry into execution all such directions as shall be given to him by the medical officer of health.

In particular, the master shall cause any clothing or bedding or any other article of personal use which belongs to or is in use or is intended for use by the master, a member of the crew, or any other person aboard the outward bound ship which, in the opinion of the medical officer of health, is infected, to be disinfected or destroyed.

The master shall also cause the quarters of the ship which have been used by any person whom the medical officer of health has ascertained to be suffering from cholera or plague or from an illness which, in the opinion of the medical officer of health, may prove to be cholera or plague, and such other parts of the ship as in the opinion of the medical officer of health are infected, to be disinfected according to his directions.

(3) The master shall not cause or suffer the ship to proceed to sea for the purpose of an outward voyage until the work of disinfection or destruction has been completed to the satisfaction of the medical officer of health, and until that work is so completed the medical officer of health may defer the giving and delivery in pursuance of Article 7 of any such certificate as is therein mentioned.

ART. 9. During the stay of an outward bound ship within a plague-affected area, the master shall, under the direction and to the satisfaction of the medical officer of health, take all such precautions or employ all such means for effectually stopping the access of rats from the shore to the ship as, in the opinion of the medical officer of health, are necessary for the prevention of the conveyance of infection by means of the ship.

ART. 10. During the stay of an outward bound ship within a cholera-affected area, the master shall take all necessary precautions for securing and maintaining the wholesome condition of any water taken on board for drinking purposes.

ART. 11. The master of an outward bound ship shall, before any such certificate as is mentioned in Article 7 is given or delivered by the medical officer of health, pay to the local authority or to the medical officer of health on behalf of the local authority a sum which shall be fixed by the local authority and shall not exceed the amount which appears in the following table as the prescribed rate of charge applicable to the outward bound ship.

TABLE OF CHARGES.

Description of Ship.	Prescribed Rate of Charge.
For an outward bound ship carrying not more than *ten* persons, including the master and crew . . .	*Ten Shillings.*
For an outward bound ship carrying more than *ten* persons and not more than *thirty* persons, including the master and crew	*One Pound.*
For an outward bound ship carrying more than *thirty* persons and not more than *one hundred* persons, including the master and crew. . . . . . and	*Two Pounds.*
For an outward bound ship carrying more than *one hundred* persons, including the master and crew .	*Three Pounds.*

PART III.

Specified Articles.

ART. 12. Part III. of the regulations shall apply and have effect in relation to the district of every local authority throughout England and Wales.

ART. 13. Except as hereinafter provided—

The owner of a specified article, being a local commodity, shall not cause or suffer the specified article to be carried out of a cholera-affected area or out of a plague-affected area with the object of being placed aboard an outward bound ship for the purpose of an outward voyage ; and

A person shall not knowingly carry any such specified article from a cholera-affected area or from a plague-affected area with the object of placing it aboard an outward bound ship for the purpose of an outward voyage, and shall not for that purpose knowingly place any such specified article or knowingly cause or suffer any such specified article to be placed aboard an outward bound ship, and shall not for the said purpose knowingly carry any such specified article or knowingly cause or suffer any such specified article to be carried on an outward bound ship ;

Provided that the foregoing prohibitions shall not apply—

Where the specified article or any case or package containing the specified article is indelibly marked with words descriptive of a cholera-affected area or a plague-affected area as the place from which the specified article being a local commodity is sent, and also with the words "not for export beyond the British Islands," or

Where the article, or any case or package containing the article though not marked as hereinbefore required, is accompanied by a certificate of efficient disinfection under the hand of the medical officer of health.

ART. 14. Where for the purposes of Article 13 a certificate of efficient disinfection under the hand of the medical officer of health is required in the case of a specified article, being a local commodity, the owner of the specified article shall before the delivery of the certificate to himself or to any person whom he authorises to receive the same, pay to the local authority or to the medical officer of health on behalf of the local authority the sum of *five shillings*.

ART. 15. Nothing in the regulations shall have effect so as to prohibit the transit through a cholera-affected area or a plague-affected area to an outward bound ship for the purpose of an outward voyage of a specified article not

 being a local commodity, where the specified article is so packed and so carried as effectually to prevent actual and direct contact of the specified article with any person or with any infected article while the specified article is on its way to the outward bound ship.

PART IV.

Medical Assistants and Saving for Mails.

ART. 16. The local authority may appoint one or more legally qualified medical practitioners to act in the execution of the regulations, either in place of or as an assistant or assistants to the medical officer of health, and may pay the practitioner or practitioners so appointed reasonable remuneration for his or their services.

ART. 17. Nothing in the regulations shall render liable to detention, disinfection, or destruction any article forming part of any mail (other than a parcel mail) conveyed under the authority of the Postmaster-General, or of the postal administration of any foreign Government, or shall prejudicially affect the receipt on board and delivery in due course at the port or place of destination of any such mail (other than a parcel mail) in accordance with the provisions of the Post Office Acts.

Given under the Seal of Office of the Local Government Board, this ninth day of September, in the year one thousand nine hundred and seven.

(L.S.) JOHN BURNS, *President.*

S. B. PROVIS, *Secretary.*

NOTICE.—The P. H. A., 1896, provides by sub-section (3) of section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under section one hundred and thirty of the P. H. A., 1875, or in pursuance of that section as extended to London by the Public Health (London) Act, 1891, and as amended by the P. H. A., 1896, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues. The power of making regulations under the P. H. A., 1896, and the enactments mentioned in that Act is enlarged by the P. H. A., 1904.

CHOLERA AND PLAGUE REGULATIONS: COASTING SHIPS.

(September 9th, 1907.)

TO THE SEVERAL PORT SANITARY AUTHORITIES; To all other Sanitary Authorities as herein defined; To all Medical Officers of Health; To all Masters of Ships; And to all others whom it may concern.

WHEREAS [*here are recited section* 130 *of the P. H. A.*, 1875 (ante, *p.* 233), *the P. H. A.*, 1896 (ante, *p.* 1074) *and section* 1 (1) *of the P. H. A.*, 1904 (ante, *p.* 1092)].

And whereas it is expedient that regulations be made as hereinafter mentioned:

Now therefore, we, the Local Government Board, in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health Act, 1904, and of every other power enabling us in that behalf, do, by this our Order, and after consultation with the Board of Trade, make the following regulations (hereinafter referred to as "the Regulations") with respect to cholera and plague, and declare that the regulations shall be enforced and executed by the authorities hereinafter mentioned:—

ART. 1. Unless the context otherwise requires, the following expressions shall throughout the regulations have the meanings hereinafter respectively assigned to those expressions; namely,—

The expression "cholera-affected area" or "plague-affected area" means an area which is within the United Kingdom and which, for the time being, is affected with cholera, or plague, as the case may be;

The expression "medical officer of health" includes any duly qualified medical practitioner appointed or employed to act in the execution of the regulations;

The expression "sanitary authority" means every port sanitary authority, and every council of a municipal borough or other urban district, and every rural district council whose borough or district includes or abuts on any part of a Customs port, which part is not within the jurisdiction of a port sanitary authority;

The expression "the district" means the district of a sanitary authority;

The expression "ship" includes a boat and every other description of vessel used in navigation;

The expression "Master" used in relation to a ship includes any officer or person for the time being in charge or command of the ship;

The expressions "Coasting Ship" and "Coast Voyage" mean respectively a ship employed, or in course of preparation for employment, in trading or going, and a voyage beginning and ending, within the following limits, that is to say, the United Kingdom, the Channel Islands, and the Isle of Man; and

The expressions "Infected" and "Infection" mean respectively infected with cholera and plague, and infection from cholera or plague.

ART. 2. The regulations shall apply and have effect in relation to the district of every sanitary authority throughout England and Wales.

ART. 3.—(1) Where the district is or comprises a cholera-affected area or a plague-affected area, the medical officer of health may, or if he have reason to suppose that a coasting ship lying or being within the district is infected, shall, at any time visit the coasting ship and examine the master and crew and every other person who, as a passenger, or otherwise, is aboard the coasting ship.

The medical officer of health may also examine any clothing or bedding, or any other article of personal use which belongs to or is in use, or is intended for use by the master, a member of the crew, or any other person aboard the coasting ship and which, in the opinion of the medical officer of health, may have been exposed to infection.

(2) The medical officer of health may, if he think fit, by arrangement with the master, examine ashore the master or any member of the crew, or any other person who as a passenger or in any other capacity intends to be carried in the coasting ship, and every such examination shall be made within twelve hours before the time at which the master, member of the crew, or such other person as aforesaid is required to go aboard the coasting ship, for the purpose of beginning a coast voyage.

ART. 4. For the purpose of the examination by the medical officer of health of the master and crew of a coasting ship, and of every other person who, as a passenger, or in any other capacity, is aboard the coasting ship, or is about to go aboard, the master, every member of the crew, and every person as aforesaid, shall answer truly all such questions as may be put to him, and give all such information as may be required from him by the medical officer of health.

ART. 5.—(1) Subject to the regulations, the medical officer of health, if on his examination as aforesaid he is of opinion that the several persons examined are not suffering from cholera or plague, or from any illness which, in the opinion of the medical officer of health, may prove to be cholera or plague, and that every part of the coasting ship and any clothing or bedding or any other article of personal use which belongs to, or is in use, or intended for use by any such person, is free from infection, may, if requested by the master, give a certificate in writing recording any matters which he deems necessary, and also, where the circumstances so require, the fact that, under his supervision, any part of the coasting ship or any such clothing, bedding, or other article has been cleansed or disinfected, or the destruction of rats has been effected.

(2) Every certificate of the medical officer of health for the purposes of this article shall be in duplicate, and one copy shall be delivered by the medical officer of health to the master, and the other copy shall be retained by the medical officer of health, or shall be transmitted by him to the sanitary authority.

Appendix II.

ART. 6.—(1) If the medical officer of health on making such examination as aforesaid of the master and crew, or of any other person aboard, or about to go aboard, a coasting ship, shall ascertain that any person so examined is suffering from cholera or plague, or from an illness which, in the opinion of the medical officer of health, may prove to be cholera or plague, the medical officer of health shall forthwith provide for the removal of the person to some hospital or other suitable place appointed for that purpose by the sanitary authority. Every person so removed shall be subject to the rules prescribed by any regulations made by us under the Public Health Acts and in force in the district.

(2) The medical officer of health shall, as regards the coasting ship, take such steps as appear to him to be necessary for preventing the spread of infection, and the master shall for that purpose forthwith carry into execution all such directions as shall be given to him by the medical officer of health.

In particular, the master shall cause any clothing or bedding or any other article of personal use which belongs to or is in use or is intended for use by the master, a member of the crew, or any other person aboard the coasting ship which, in the opinion of the medical officer of health, is infected, to be disinfected or destroyed.

The master shall also cause the quarters of the ship which have been used by any person whom the medical officer of health has ascertained to be suffering from cholera or plague or from an illness which, in the opinion of the medical officer of health, may prove to be cholera or plague, and such other parts of the ship as in the opinion of the medical officer of health are infected, to be disinfected according to his directions.

(3) The master shall not cause or suffer the ship to proceed to sea for the purpose of a coast voyage until the work of disinfection or destruction has been completed to the satisfaction of the medical officer of health, and until that work is so completed the medical officer of health may defer the giving and delivery in pursuance of Art. 5 of any certificate as is therein mentioned.

ART. 7. During the stay of a coasting ship within a plague-affected area, the master shall, under the direction and to the satisfaction of the medical officer of health, take all such precautions or employ all such means for effectually stopping the access of rats from the shore to the ship as, in the opinion of the medical officer of health, are necessary for the prevention of the conveyance of infection by means of the ship.

ART. 8. During the stay of a coasting ship within a cholera-affected area, the master shall take all the necessary precautions for securing and maintaining the wholesome condition of any water taken on board for drinking purposes.

ART. 9. Where the sanitary authority on the advice of the medical officer of health so require, the master of a coasting ship shall, before any such certificate as is mentioned in Article 5, is given or delivered by the medical officer of health, pay to the sanitary authority or to the medical officer of health on behalf of the sanitary authority a sum which shall be fixed by the sanitary authority and shall not exceed the amount which appears in the following table as the prescribed rate of charge applicable to the coasting ship.

TABLE OF CHARGES.

Description of Ship.	Prescribed Rate of Charge.
For a coasting ship carrying not more than *ten* persons, including the master and crew	*Ten Shillings.*
For a coasting ship carrying more than *ten* persons, and not more than *thirty* persons, including the master and crew	*One Pound.*
For a coasting ship carrying more than *thirty* persons and not more than *one hundred* persons, including the master and crew	*Two Pounds.*
For a coasting ship carrying more than *one hundred* persons, including the master and crew . . .	*Three Pounds.*

ART. 10. The sanitary authority may appoint one or more legally qualified medical practitioners to act in the execution of the regulations, either in place of or as an assistant or assistants to the medical officer of health, and may pay the practitioner or practitioners so appointed reasonable remuneration for his or their services.

ART. 11. Nothing in the regulations shall render liable to detention, disinfection, or destruction any article forming part of any mail (other than a parcel mail) conveyed under the authority of the Postmaster-General, or of the postal administration of any foreign government, or shall prejudicially affect the receipt on board and delivery in due course to the post office of any such mail (other than a parcel mail) in accordance with the provisions of the Post Office Acts.

Given under the Seal of Office of the Local Government Board, this ninth day of September, in the year one thousand nine hundred and seven.

(L.S.) JOHN BURNS, *President.*

S. B. PROVIS, *Secretary.*

NOTICE.—The P. H. A., 1896, provides by sub-section (3) of section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of any regulation made under section one hundred and thirty of the P. H. A., 1875, or in pursuance of that section as extended to London by the Public Health (London) Act, 1891, and as amended by the P. H. A., 1896, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues. The power of making regulations under the P. H. A., 1896, and the enactments mentioned in that Act is enlarged by the P. H. A., 1904.

NOTIFICATION OF CASES OF PLAGUE—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
20th September, 1900.

SIR,—I am directed by the Local Government Board to state that in consequence of the appearance of plague at Glasgow, and in view of the possible occurrence of cases of the disease in England and Wales, they have decided to issue an Order requiring the immediate notification to the sanitary authorities and to themselves of all cases of plague.

The Order, in its application to sanitary districts outside London, extends the provisions of the Infectious Disease (Notification) Act, 1889 (*d*), to the notification of every case of plague occurring in the district of a sanitary authority.

As regards the district of any sanitary authority in the administrative county of London, and the district of the port sanitary authority of London, the Order similarly extends the provisions of section 55 of the Public Health (London) Act, 1891.

The Order also requires the sanitary authority forthwith to send circular letters to all legally qualified medical practitioners in the district, informing them of their duties under the regulations, and it imposes upon every medical officer of health the duty of reporting forthwith to the Board any case of plague which may be notified to him, or which may otherwise come or be brought to his knowledge, and which may occur in the district or area assigned to his charge.

Attention is drawn to the definitions of " sanitary authority " and " medical officer of health " in Article 1 of the Order.

Copies of the Order are enclosed, and the Board request that you will deliver a copy to the medical officer of health, as defined by the Order.

I am, Sir, your obedient servant,

JOHN LITHIBY, *Assistant Secretary.*

To the Clerk to the Sanitary Authority.

(*d*) *Ante*, p. 796.

Appendix II.

EPIDEMIC REGULATIONS: NOTIFICATION OF CASES OF PLAGUE (GENERAL).

(September 19th, 1900.)

To ALL SANITARY AUTHORITIES in England and Wales as herein defined;
To all Medical Officers of Health of the Sanitary Authorities aforesaid;
And to all others whom it may concern.

WHEREAS England and Wales appear to be threatened with plague and it is desirable that regulations should be made as hereinafter contained:

Now therefore, we, the Local Government Board, in the exercise of the powers given to us by the Public Health Acts, and any other Acts enabling us in this behalf, do, by this our Order, make the following regulations, and declare the same to be in force in the district of every sanitary authority in England and Wales, and to apply to all vessels within the jurisdiction of a port sanitary authority or a riparian authority:

ART. 1. In this Order—

The expression "sanitary authority" means every port sanitary authority and every council of a county borough and every urban or rural district council, and in the administrative county of London every sanitary authority for the execution of the Public Health (London) Act, 1891.

The expression "medical officer of health" includes any duly qualified medical practitioner appointed or employed by a sanitary authority to act in the execution of any regulations made by us in pursuance of any of the enactments referred to in this Order.

ART. 2. In the district of every sanitary authority which is situate without the administrative county of London the persons mentioned in section 3 of the Infectious Disease (Notification) Act, 1889 (*e*), and the sanitary authority shall, under this Order, have the same powers and duties in relation to the notification of cases of plague as they would have under that Act if plague were an infectious disease to which that Act applied.

In the district of every sanitary authority in the administrative county of London, and in the district of the port sanitary authority of the port of London, the persons mentioned in section 55 of the Public Health (London) Act, 1891 (including the managers of the metropolitan asylum district), and the sanitary authority shall, under this Order, have the same powers and duties in relation to the notification of cases of plague as they would have under that section if plague were an infectious disease to which that section applied.

The sanitary authority shall forthwith cause circular letters to be sent to all legally qualified medical practitioners in the district informing them of their duties under this regulation.

ART. 3. It shall be the duty of every medical officer of health to report forthwith to us any case of plague which may be notified to him, or which may otherwise come or be brought to his knowledge and which may occur in the district or area assigned to his charge.

Given under the Seal of Office of the Local Government Board, this nineteenth day of September, in the year one thousand nine hundred.

(L.S.) HENRY CHAPLIN, *President.*

WILL. ED. KNOLLYS, *Assistant Secretary.*

(*e*) *Ante*, p. 796.

PREVENTION OF EPIDEMIC DISEASES: REGULATIONS AS TO PLAGUE—DESTRUCTION OF RATS.

(November 10th, 1910.)

To THE MAYOR, ALDERMEN AND COMMONS of the City of London; To the Councils of the several Metropolitan Boroughs; To the Councils of the several Municipal Boroughs and other Urban Districts; To the Councils of the several Rural Districts; To the several Port Sanitary Authorities; And to all others whom it may concern.

WHEREAS [*reciting powers to make regulations*].

Now therefore, we, the Local Government Board, do, by this our Order, and in the exercise of the powers conferred on us by the Public Health Act, 1875, the Public Health (London) Act, 1891, and the Public Health Act, 1896, and every other power enabling us in that behalf, make the following regulations, and declare that the said regulations shall apply and have effect throughout England and Wales, and shall be enforced and executed by the authorities, officers, and servants hereinafter mentioned:—

ART. 1. In this Order—

The expression "local authority" means the common council of the city of London, the council of each metropolitan borough, the council of each municipal borough or other urban district, the council of each rural district and each port sanitary authority;

The expression "district" means the district of a local authority.

ART. 2. In any district in which a representation is made to the local authority that rats in the district are infected or threatened with plague, or that there is an unusual mortality among rats in the district, the local authority shall report the matter to us, and shall take measures (a) for the destruction of all rats in the district, and (b) for preventing the entrance of rats into buildings and other premises in the district.

ART. 3. For the purposes of these regulations the local authority may appoint such additional officers or servants as they may deem necessary and may delegate to such officers or servants any powers under these regulations.

ART. 4. The expenses incurred by a local authority in the execution of these regulations shall be defrayed in the case of a local authority which is a sanitary authority for the execution of the Public Health (London) Act, 1891, as part of their expenses in the execution of that Act, and in the case of any other local authority as part of their general expenses in the execution of the Public Health Acts.

Given under the Seal of Office of the Local Government Board, this tenth day of November, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

NOTICE.—The P. H. A., 1896, provides by sub-section (3) of section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under section one hundred and thirty, or section one hundred and thirty-four of the P. H. A., 1875, or in pursuance of either of those sections as extended to London by the Public Health (London) Act, 1891, and as amended by the P. H. A., 1896, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues.

Appendix II.

COMMONS.

REGULATIONS MADE BY THE BOARD OF AGRICULTURE PURSUANT TO THE PROVISIONS OF THE COMMONS ACT, 1899 (62 & 63 VICT. c. 30).

Form of scheme.

1. A scheme made by a council under the Commons Act, 1899, shall be in the form set forth in the schedule to these regulations, subject to such modifications, if any, as shall appear to the council to be necessary or expedient and as shall be proved by the Board of Agriculture.

Notices to be given of intention to make a scheme.

2. Notice of the intention of a council to make a scheme under the said Act shall be given by the council in manner following—

(a) By an advertisement in at least one newspaper having a wide circulation in the neighbourhood of the common affected by the scheme—the advertisement to be twice inserted, with an interval of not less than one week between the insertions :—

(b) By copies posted at two or more places on the common :—

(c) By service of a copy of the notice upon the council of every parish in which any part of the common is situate :—and

(d) By registered letter sent to every person entitled, as lord of the manor or otherwise, to the soil of the common, and addressed to his usual or last known place of abode ; provided always that where the persons so entitled are numerous the Board may dispense with such notice.

Whenever Her Majesty is so entitled, the notice shall be sent to the Commissioners of Woods and Forests, unless Her Majesty is so entitled in right of the Duchy of Lancaster, in which case it shall be sent to the Chancellor of the Duchy of Lancaster.

Whenever the Duke of Cornwall is so entitled, the notice shall be sent to the Lord Warden of the Stannaries.

Form of notice.

3. The notice shall be in the form set forth in the schedule to these regulations, or to the like effect.

Place for inspection of plan.

4. The place for the inspection of the plan referred to in a draft scheme shall be the office of the council making the scheme.

Commencement and short title.

5. These regulations shall come into operation on the eighth day of May, one thousand nine hundred, and may be cited as the Commons Regulations, 1900.

Revocation.

6. All regulations heretofore made under the provisions of the Commons Act, 1899, are hereby revoked except as to any proceedings taken, or draft scheme made, under any such regulations.

Given under the Official Seal of the Board of Agriculture this first day of May in the year one thousand nine hundred.

(L.S.) T. H. ELLIOTT, *Secretary.*

SCHEDULE.

FORM I.

FORM OF SCHEME.

Description of common and management by district council.

1. The piece of land with the ponds paths and roads thereon commonly known as [ ] Common, situate in the parish of [ ] in the county of [ ] and hereinafter referred to as "the common," as the same is delineated in a plan deposited at the office of the [ ] District Council of [ ], hereinafter called "the council," and thereon coloured green, being a "common" within the meaning of the Commons Act, 1899, shall henceforth be regulated by this scheme and the management thereof shall be vested in the Council.

N.B.—An Ordnance Survey Map is, if possible, to be used.

Appointment of officers.

2. The powers of the council generally as to appointing or employing officers and servants and paying them under the general Acts applicable to the council shall apply to all such persons as in the judgment of the council may be necessary and proper for the preservation of order on and the enforcement of byelaws with respect to the common

and otherwise for the purposes of this scheme and the council may make rules for regulating the duties and conduct of the several officers and servants so appointed and employed and may alter such rules as occasion may require.

3. The council may execute any works of drainage raising levelling or fencing or other works for the protection and improvement of the common and shall preserve the turf, shrubs, trees, plants, and grass thereon and for this purpose may for short periods enclose by fences such portions as may require rest to revive the same and may plant trees and shrubs for shelter or ornament and may place seats upon and light the common and otherwise improve the common as a place for exercise or recreation but the council shall do nothing that may otherwise vary or alter the natural features or aspect of the common or interfere with free access to every part thereof, and shall not erect upon the common any shelter pavilion or other building without the previous consent of the person entitled to the soil of the common. Protection and improvement of common.

4. The council shall maintain the common free from all encroachments and shall not permit any trespass on or partial or other enclosure of any part thereof. Against encroachments.

5. The inhabitants of the district and neighbourhood shall have a right of free access to every part of the common and a privilege of playing games and of enjoying other species of recreation thereon, subject to any byelaws made by the council under this scheme. Public right of access and recreation.

6. The [*here insert description of any particular trees or objects of historical interest*] are so far as possible to be preserved by the council. Preservation of objects of interest.

7. The council shall have power to repair and maintain the existing paths and roads on the common and to set out, make, and maintain such new paths and roads on the common as appear to the Council to be necessary or expedient and to take any proceedings necessary for the stopping or diversion of any highway over the common. Maintenance and construction of paths and roads.

8. The council may for the prevention of accidents fence any quarry, pit, pond, or other like place on the common. Fencing of quarries, etc.

9. The council may set apart for games any portion or portions of the common as they may consider expedient and may form cricket grounds and may allow the same to be temporarily enclosed with an open fence so as to prevent cattle and horses straying thereon but such grounds shall not be laid out so near to any dwelling-house as to create a nuisance or be an annoyance to the inhabitants thereof. Games, etc.

10. The council may, for the prevention of nuisances and the preservation of order on the common and subject to the provisions of section 10 of the Commons Act, 1899, make, revoke, and alter byelaws for any of the following purposes, viz. :— Byelaws.

(a) For prohibiting the deposit on the common, or in any pond thereon, of road-sand, materials for repair of roads, dung, rubbish, wood, or other matter ;

(b) For prohibiting any person without lawful authority from digging, cutting, or taking turf, sods, gravel, sand, clay, or other substance on or from the common, and from cutting, felling, or injuring any gorse, heather, timber, or other tree, shrub, brushwood, or other plant growing on the common ;

(c) For regulating the place and mode of digging and taking turf, sods, gravel, sand, clay, or other substance, and cutting, felling, and taking trees or underwood on or from the common, in exercise of any right of common or other right over the common ;

(d) For prohibiting the injury, defacement, or removal of seats, fences, notice-boards or other things put up or maintained by the council on the common ;

(e) For prohibiting or regulating the posting or painting of bills, placards, advertisements, or notices on trees or fences or notice-boards on the common ;

(f) For prohibiting any person without lawful authority from bird catching, setting traps or nets or liming trees or laying snares for birds or other animals, taking birds' eggs or nests, and shooting or chasing game or other animals on the common ;

(g) For prohibiting or regulating the drawing without lawful authority upon the common of any carriage, cart, caravan, truck, or other vehicle, and the erecting or permitting to remain on the common, without the consent of the council or other lawful authority, any building, shed, tent, fence, post, railing, or other structure, whether used in connection with the playing of games or not, and for authorising an officer of the council to remove from the common any vehicle drawn upon the common and any structure erected thereon in contravention of any such byelaw.

(h) For prohibiting (except in the case of a fair lawfully held) or regulating the placing on the common of any photographic cart, or of any show, exhibition, swing, roundabout, or other like thing, and for authorising an officer of the council to remove from the common any thing placed upon the common in contravention of any such byelaw ;

(j) For prohibiting or regulating the lighting of any fire on the common ;

(k) For prohibiting or regulating the firing or discharge of firearms or the throwing or discharge of missiles on the common ;

Appendix II.

(l) For regulating games to be played and other means of recreation to be exercised on the common, and assemblages of persons thereon;

(m) For regulating the use of any portion of the common temporarily enclosed or set apart under this scheme for any purpose;

(n) For prohibiting or regulating horses being exercised or broken in without lawful authority by grooms or others on the common;

(o) For prohibiting any person without lawful authority from turning out or permitting to remain on the common any cattle, sheep, or other animals; and for authorising an officer of the council to remove from the common any cattle, sheep, or other animal being upon the common in contravention of any such byelaw;

(p) Generally, for prohibiting or regulating any act or thing tending to injury or disfigurement of the common or to interference with the use thereof by the public for the purposes of exercise and recreation;

(q) For authorising an officer of the council, after due warning, to remove or exclude from the common any person who within his view commits, or whom he reasonably suspects of committing, an offence against any byelaw made under this scheme or against the Vagrancy Act, 1824;

(r) For prohibiting the hindrance or obstruction of an officer of the council in the exercise of his powers or duties under this scheme or under any byelaws made thereunder.

Publication of byelaws on common.

11. All byelaws made under this scheme shall be published on notice-boards placed on such parts of the common (not less than) as to the council may appear desirable.

Saving of rights, etc., in the soil and highways.

12. Nothing in this scheme or any byelaw made thereunder shall prejudice or affect any right of the lord of the manor [*or* the person entitled to the soil of the common] or of any person claiming under him which is lawfully exercisable in, over, under, or on the soil or surface of the common in connection with game or with mines, minerals, or other substrata or otherwise, or prejudice or affect the lawful use of any highway or thoroughfare on the common or affect any power or obligation to repair any such highway or thoroughfare.

Copies of scheme.

13. Printed copies of this scheme shall at all times be sold at the office of the council to all persons desiring to buy the same at a price not exceeding sixpence each.

FORM II.

FORM OF NOTICE.

COMMONS ACT, 1899.

[*Name of Common.*]

NOTICE is hereby given that the [ ] district council intend to make a scheme under the above Act for the regulation and management of [*name of common*] in their district with a view to the expenditure of money on the drainage, levelling, and improvement of the common and to the making of byelaws and regulations for the prevention of nuisances and the preservation of order thereon.

Copies of the draft of the scheme may be obtained (price [*not exceeding six*] pence per copy) and the plan therein referred to may be inspected at the offices of the council.

Any objection or suggestion with respect to the scheme or plan may be sent, post free, to *The Secretary, Board of Agriculture,* 3, *St. James's Square, London, S.W.*, within three months from the date of this notice.

Clerk to the above Council.

[*Date.*]

INSTRUCTIONS BY THE BOARD OF AGRICULTURE AND FISHERIES WITH RESPECT TO SCHEMES FOR THE REGULATION AND MANAGEMENT OF COMMONS UNDER PART I. OF THE COMMONS ACT, 1899 (62 & 63 VICT. c. 30).

1. The council of an urban or rural district are empowered to make a scheme for the regulation and management of any common within their district, with a view to the expenditure of money on the drainage, levelling, and improvement, of the common, and to the making of byelaws and regulations for the prevention of nuisances and the preservation of order on the common.

2. The scheme is to be in the form prescribed by regulations of the Board, and is to identify by reference to a plan the common to be thereby regulated, and for this purpose an ordnance survey map is, if possible, to be used. The map should preferably be on the $\frac{1}{2500}$ scale, and should show the areas proposed to be regulated by a flat green tint, and the limits of those areas by an edging of darker green. The following note should be conspicuously written on the map: "The green colour includes the whole of the lands, ponds, paths, and streams forming parts of the common (or commons), but is not intended to include any boundary ditches forming parts of adjoining properties." **Appendix II.**

3. Not less than three months before the making of a scheme the council are to give such notice of their intention to make it as is prescribed by the Board's regulations (see paragraph 22 below), and are to state thereby where copies of the draft of the scheme may be obtained, and where the plan therein referred to may be inspected. They are also to send to the Board as soon as possible a copy of the draft and plan.

4. During the three months any person may obtain copies of the draft on payment of a sum not exceeding sixpence per copy, and may inspect the plan at the prescribed place, and may make in writing to the Board any objection or suggestion with respect to the scheme or plan.

5. After the expiration of the three months the Board are to take into consideration any objections or suggestions so made, and for that purpose may, if they think fit, direct that an inquiry be held by an officer of the Board.

6. The Board are empowered to approve of the scheme, subject to such modifications, if any, as they think desirable, and thereupon the scheme is to have full effect.

7. The Act contains a proviso that if, at any time before the Board have approved of the scheme, they receive a written notice of dissent either—

(a) From the person entitled, as lord of the manor or otherwise, to the soil of the common, or

(b) From persons representing at least one-third in value of such interests in the common as are affected by the scheme,

and such notice is not subsequently withdrawn, the Board are not to proceed further in the matter.

8. The management of any common regulated by a scheme made by a district council is to be vested in the district council.

9. A rural district council may delegate to a parish council any powers of management thus conferred on the district council in relation to any commons within the parish, and thereupon the Public Health Acts will apply as if the parish council were a parochial committee (see Public Health Act, 1875, section 202).

10. A parish council may agree to contribute the whole or any portion of the expenses of and incidental to the preparation and execution of a scheme for the regulation and management of any common within their parish (including any compensation paid under the Act), but subject to the restrictions on expenditure imposed by section eleven of the Local Government Act, 1894.

11. The Act provides that no estate, interest, or right of a profitable or beneficial nature in, over, or affecting any common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any such scheme without compensation being made or provided for the same by the council making the scheme, and such compensation is, in case of difference, to be ascertained and provided in the same manner as if it were for the compulsory purchase and taking, or the injurious affecting, of lands under the Lands Clauses Acts.

12. A district council may acquire, by gift or by purchase by agreement, the fee simple or any estate in or any rights in or over any common regulated by a scheme under the Act, and hold the same without licence in mortmain for the purposes of the scheme, and the expenses thus incurred by the district council will be part of their expenses of executing the scheme.

Appendix II.

13. When a common is regulated by a scheme under the Act, the restrictions imposed by section twenty of the Commons Act, 1876, on the digging of gravel for the repair of the highways, will apply, so that no road authority will be able to take material for roads from any part of the common without the consent of the district council, or in default of such consent without an order of the justices in petty sessions.

14. The power to make a scheme includes power to amend or supplement a scheme.

15. The provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six, both inclusive, of the Public Health Act, 1875, and any enactment amending or extending those sections, will apply to all byelaws made in pursuance of a scheme under the Act, and any fine imposed by any such byelaw will be recoverable summarily and be payable to the council in whom the management of the common is vested.

16. All expenses incurred by the Board in relation to a scheme, and all expenses of and incidental to the preparation and execution of the scheme (including any compensation), are to be paid by the district council, and are to be treated as part of the expenses of the district council in the execution of the powers conferred by the Public Health Acts.

17. A district council may for the purposes of the Act borrow money in like manner and subject to the like conditions as they may borrow for defraying expenses incurred in the execution of the Public Health Acts, and the said Acts will apply accordingly.

18. The council of any urban district may, with a view to the benefit of the inhabitants of their district, and subject to the approval of the Local Government Board, enter into an undertaking with any other council making or having made a scheme to contribute any portion of the expenses incurred by that council in executing the scheme.

19. The above provisions of the Act apply to the council of a county borough in like manner as if that council were the council of an urban district.

20. No scheme under the Act can apply to any common which is or might be the subject of a scheme made under the Metropolitan Commons Acts, 1866 to 1898, or is regulated by a provisional order under the Inclosure Acts, 1845 to 1882, or has been acquired, or managed as an open space, under the powers of the Corporation of London (Open Spaces) Act, 1878, or any Act therein referred to, or is the subject of any private or local and personal Act of Parliament having for its object the preservation of the common as an open space, or is subject to byelaws made by a parish council under section eight of the Local Government Act, 1894.

21. The expression "common" as used in the Act includes any town or village green, as well as any land subject to be inclosed under the Inclosure Acts, 1845 to 1882, that is, practically, any commonable land whether waste of a manor or not.

22. Copies of the regulations framed by the Board, prescribing the form of scheme and the notice to be given by a council of their intention to make a scheme, may be had on application to the Board.

T. H. ELLIOTT, *Secretary.*

Board of Agriculture and Fisheries,
3, St. James's Square, London, S.W.
December 1*st*, 1908.

Appendix II.

CONFERENCES.

LOCAL GOVERNMENT CONFERENCES—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
May 14*th*, 1891.

SIR,—I am directed by the Local Government Board to advert to the provisions of the Public Health and Local Government Conferences Act, 1885 (*f*), under which any local authority within the meaning of the Public Health Act, 1875, other than the urban sanitary authority of a borough, may, when empowered by and subject to any regulations made by the Board, pay the reasonable expenses incurred by any member of the local authority or by the clerk in attending a conference or meeting of the members of the local authorities held for the purpose of discussing any matter connected with the duties devolving on them, and also any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting.

The Board have had under consideration the desirability of regulations being made under the Act referred to, and, having regard to the representations which have been made to them on the subject, they have considered it advisable to exercise their power of making regulations so far as regards conferences or meetings of members of the urban sanitary authorities to whom the Act applies.

The Board have accordingly issued an Order on the subject, which will apply to the local board of any local government district, and to the improvement commissioners of any Improvement Act district. Two copies of the Order are enclosed.

The Order provides for the payment of the reasonable expenses incurred by the representatives of a local authority to whom the Order applies in attending either at a central conference or meeting open to representatives of all local boards and improvement commissioners, or at a conference or meeting convened for an area including the district from which the representatives are sent. In the latter case, however, the conference or meeting must be held at a place not more than one hundred miles from the district.

The expenses will not be payable unless at a meeting of the local authority of the district a resolution has been passed expressly authorising the attendance at the conference or meeting of a member or members, or of the clerk to the local authority. It is necessary that a written or printed notice that the proposal will be considered at the meeting shall have been sent, by post or otherwise, to each member not less than four days before the date of the meeting of the local authority; and it should be observed that, if the attendance of more than one member is to be authorised, the number must be specified in the resolution.

The Order fixes two as the maximum number of members who may be empowered to attend, and directs that in the case of a central conference only one member shall be authorised to attend from any district more than fifty miles from the place of meeting. These numbers are in addition to the clerk.

The Board have not deemed it practicable to specify the precise sum which should be allowed in respect of an attendance at a conference or meeting. The statute only admits of the expenses actually incurred being charged, and it requires that these should be reasonable. They must necessarily vary in different cases, but the Board think that in addition to the actual travelling expenses they should not exceed the following scale for each person, viz. :—

Seven shillings and sixpence per day when not absent from home at night; and

Fifteen shillings per day when absence from home is necessary.

With regard to the reports of the conferences or meetings it will be seen that the Board have left it to the local authority to determine by resolution what number of copies they will purchase. The power of purchase extends to the

(*f*) *Ante*, p. 722.

Appendix II. reports both of a central conference or meeting, and of any conference or meeting for an area including the district.

I am, Sir, your obedient servant,
HUGH OWEN, *Secretary.*

The Clerk to the Local Board or *Improvement Commissioners.*

LOCAL GOVERNMENT CONFERENCES—GENERAL ORDER.

(May 13th, 1891.)

TO THE LOCAL BOARDS, for the time being, of the several Local Government Districts in England and Wales; To the Improvement Commissioners, for the time being, of the several Improvement Act Districts in England and Wales; And to all others whom it may concern.

WHEREAS [*section 2 of the Public Health and Local Government Conferences Act,* 1885 (ante, *p.* 722), *is recited*].

And whereas local boards of local government districts and improvement commissioners of Improvement Act districts are respectively local authorities within the meaning of the said Act;

Now therefore, we, the Local Government Board, do, by this our Order, empower the local boards of the several local government districts, and the improvement commissioners of the several Improvement Act districts, for the time being in England and Wales, to pay the reasonable expenses incurred by any member or members or by the clerk in attending any such conference or meeting as is mentioned in the above-recited section, and any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting, subject to the following regulations:—

(1) The expenses incurred in attending a conference or meeting shall only be paid in respect of attendance at a central conference or meeting open to representatives of all local boards and improvement commissioners, or at a conference or meeting convened for an area including the district from which the persons attending as representatives are sent and held at a place distant not more than one hundred miles from such district.

(2) The attendance at any conference or meeting of a member or members of, or of the clerk to, the local authority of any such district shall be expressly authorised by a resolution passed at a meeting of the local authority of such district, a written or printed notice that the proposal is to be considered at that meeting having been sent, by post or otherwise, to each member not less than four days prior to the date of the meeting of the local authority; and where the attendance of more than one member is authorised, the number of members authorised to attend shall be specified in the resolution.

(3) The maximum number of members authorised to attend any conference or meeting shall be two, and in the case of a central conference or meeting only one member shall be authorised to attend from any district which is at a distance of more than fifty miles from the place of meeting.

(4) The number of copies which may be purchased by the local authority of any district of the report of a central conference or meeting, or of any conference or meeting for an area including the district, shall be such as the local authority of the district may, by resolution, determine.

Given under the Seal of Office of the Local Government Board, this thirteenth day of May, in the year one thousand eight hundred and ninety-one.

(L.S.) CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

PUBLIC HEALTH AND LOCAL GOVERNMENT CONFERENCES ACT, 1885—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
December 29th, 1896.

SIR,—I am directed by the Local Government Board to advert to the provisions of the Public Health and Local Government Conferences Act, 1885, under which any local authority within the meaning of the Public Health Act, 1875, other than the urban sanitary authority of a borough, may, when empowered by and subject to any regulations made by the Board, pay the reasonable expenses incurred by any member of the local authority or by the clerk in attending a conference or meeting of the members of local authorities held for the purpose of discussing any matter connected with the duties devolving on them, and also any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting.

The Board having had under consideration the representations which have been made to them on the subject by rural district councils, have considered it advisable to exercise their power of making regulations as regards conferences or meetings of members of those councils. The Board have accordingly issued an Order on the subject. Two copies of the Order are enclosed.

The Order provides for the payment of the reasonable expenses incurred by the representatives of a rural district council in attending either at a central conference or meeting open to representatives of all rural district councils, or at a conference or meeting convened for an area including the district from which the representatives are sent. In the latter case, however, the conference or meeting must be held at a place not more than one hundred miles from the district.

The expenses will not be payable unless at a meeting of the rural district council a resolution has been passed expressly authorising the attendance at the conference or meeting of a member or members, or of the clerk to the council. It is necessary that a written or printed notice that the proposal will be considered at the meeting shall have been sent, by post or otherwise, to each member not less than four days before the date of the meeting of the council; and it should be observed that, if the attendance of more than one member is to be authorised, the number must be specified in the resolution.

The Order fixes two as the maximum number of members who may be empowered to attend, and directs that in the case of a central conference only one member shall be authorised to attend from any district more than fifty miles from the place of meeting. These numbers are in addition to the clerk.

The Board have not deemed it practicable to specify the precise sum which should be allowed in respect of an attendance at a conference or meeting. The statute only admits of the expenses actually incurred being charged, and it requires that these should be reasonable. They must necessarily vary in different cases, but the Board think that in addition to the actual travelling expenses they should not exceed the following scale for each person, viz. :—

Seven shillings and sixpence per day when not absent from home at night and

Fifteen shillings per day when absence from home at night is necessary.

With regard to the reports of the conferences or meetings it will be seen that the Board have left it to the rural district council to determine by resolution what number of copies they will purchase. The power of purchase extends to the reports both of a central conference or meeting, and of any conference or meeting for an area including the district.

I am, Sir, your obedient servant,

HUGH OWEN, *Secretary*.

The Clerk to the Rural District Council.

Appendix II.

LOCAL GOVERNMENT CONFERENCES—ORDER AS TO RURAL DISTRICT COUNCILS.

(December 28th, 1896.)

TO THE RURAL DISTRICT COUNCILS, for the time being, of the several Rural Districts in England and Wales; And to all others whom it may concern.

WHEREAS [*section 2 of the Public Health and Local Government Conferences Act*, 1885 (ante, *p.* 722), *is recited*].

And whereas rural district councils are local authorities within the meaning of the said Act;

Now therefore, we, the Local Government Board, do, by this our Order, empower the rural district councils of the several rural districts, for the time being, in England and Wales to pay the reasonable expenses incurred by any member or members or by the clerk in attending any such conference or meeting as is mentioned in the above-recited section, and any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting, subject to the following regulations:—

(1) The expenses incurred in attending a conference or meeting shall only be paid in respect of attendance at a central conference or meeting open to representatives of all rural district councils, or at a conference or meeting convened for an area including the district from which the persons attending as representatives are sent and held at a place distant not more than one hundred miles from such district.

(2) The attendance at any conference or meeting of a member or members of, or of the clerk to, the rural district council shall be expressly authorised by a resolution passed at a meeting of the rural district council, a written or printed notice that the proposal is to be considered at that meeting having been sent, by post or otherwise, to each member not less than four days prior to the date of the meeting of the rural district council; and where the attendance of more than one member is authorised, the number of members authorised to attend shall be specified in the resolution.

(3) The maximum number of members authorised to attend any conference or meeting shall be two, and in the case of a central conference or meeting only one member shall be authorised to attend from any district which is at a distance of more than fifty miles from the place of meeting.

(4) The number of copies which may be purchased by any rural district council of the report of a central conference or meeting, or of any conference or meeting for an area including their district, shall be such as the rural district council may, by resolution, determine.

Given under the Seal of Office of the Local Government Board, this twenty-eighth day of December, in the year one thousand eight hundred and ninety-six.

(L.S.) HENRY CHAPLIN, *President*.

HUGH OWEN, *Secretary*.

CONTRACTS.

FAIR WAGES CLAUSES IN CONTRACTS—CIRCULAR.

(September 2nd, 1911.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
September 2nd, 1911.

SIR,—I am directed by the Local Government Board to draw the attention of the local authority to the accompanying memorandum embodying the resolution passed by the House of Commons on the 10th March, 1909, on the subject of fair wages clauses in Government contracts, and the recommendations made by the advisory committee of representatives of Government

departments which has been established as suggested in paragraph 124 of the Report of the Fair Wages Committee of 1908 (Cd. 4422).

It will be seen that the advisory committee recommend that clauses such as those inserted in Government contracts should also be introduced into contracts which are not entered into by Government departments but which involve the expenditure of public money or other consideration granted by a Government department or which require the approval of the department.

It appears to the Board that the policy adopted in the case of Government contracts should be followed in the cases of all contracts for the execution of works or the supply of materials which are entered into by local authorities or by or on behalf of any committee wholly or in part appointed by a local authority. Whilst they are aware that many local authorities specify in their contracts conditions to be observed by the contractor as to rates of wages and other matters affecting persons employed by him, the Board think that in every case the authority should give the matter careful consideration with the view to the introduction in the contracts of clauses on the lines of those inserted in Government contracts.

I am, Sir, your obedient servant,

H. C. MONRO, *Secretary.*

To the Clerk to the Local Authority.

FAIR WAGES CLAUSES IN GOVERNMENT CONTRACTS.

The following clauses recommended by the Fair Wages Advisory Committee for general use in Government contracts, with a view to carrying out the objects of the fair wages resolutions of the House of Commons, have been generally adopted by the contracting departments :—

FOR INCLUSION IN ALL CONTRACTS.

1.—*Fair Wages Clause.*

The contractor shall in the execution of his contract observe and fulfil the obligations upon contractors specified in the resolution passed by the House of Commons on the 10th March, 1909, namely: "The contractor shall . . . pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trade societies (or, in the absence of such recognised wages and hours, those which in practice prevail amongst good employers) in the trade in the district where the work is carried out. Where there are no such wages and hours recognised or prevailing in the district, those recognised or prevailing in the nearest district in which the general industrial circumstances are similar shall be adopted. Further, the conditions of employment generally accepted in the district in the trade concerned shall be taken into account in considering how far the terms of the fair wages clauses are being observed. The contractor shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatever, any portion of his contract without the written permission of the department. Sub-letting, other than that which may be customary in the trade concerned, shall be prohibited. The contractor shall be responsible for the observance of the fair wages clauses by the sub-contractor."

2.—*Exhibition of Notice at Works.*

The contractor shall cause the preceding condition to be prominently exhibited for the information of his workpeople, on the premises where work is being executed under the contract.

3.—*Inspection of Wages Books, &c.*

The contractor shall keep proper wages books and time sheets, showing the wages paid and [so far as practicable] the time worked by the workpeople in his employ in and about the execution of the contract, and such wages books and time sheets shall be produced whenever required for the inspection of any officer authorised by the department (*g*).

FOR INCLUSION IN CONTRACTS IN CERTAIN TRADES.

4.—*Factory Clause.*

All work executed under the contract shall be carried out at the contractor's own factory or workshop at , or other place approved by the department (*g*), and no work under the contract shall be done in the homes of the workpeople.

(*g*) Specify the department.

Appendix II. 5.—*Direct Payment of Wages.*

All wages earned by workers engaged on work under the contract shall be paid directly to them and not through a foreman or others supervising or taking part in the operations on which the workers are engaged.

SEMI-GOVERNMENT CONTRACTS.

The Fair Wages Advisory Committee have recommended, that in the case of contracts which are not entered into by a Government department but which involve the expenditure of public money or other consideration granted by the department, or which have to be approved by a Government department, the department concerned should adopt the principle already followed in some instances and should require the insertion in such contracts of fair wages clauses on the lines of those inserted in Government contracts, with such modifications as may be necessary in particular cases.

March, 1911.

TRADE BOARDS ACT, 1909, CONTRACTS OF LOCAL AUTHORITIES—CIRCULAR.

(July 29th, 1910.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.
July 29th, 1910.

I am directed by the Local Government Board to state that they have been desired by the Board of Trade to draw the attention of local authorities to certain provisions in the Trade Boards Act, 1909, which are of importance in their bearing upon the contracts of local authorities.

The trades to which the Act at present applies are set out in the schedule to the Act and comprise :—

1. Ready-made and wholesale bespoke tailoring and any other branch of tailoring in which the Board of Trade consider that the system of manufacture is generally similar to that prevailing in the wholesale trade.
2. The making of boxes or parts thereof made wholly or partially of paper, cardboard, chip, or similar material.
3. Machine-made lace and net finishing and mending or darning operations of lace curtain finishing.
4. Hammered and dollied or tommied chain-making.

But the Board of Trade may, by Provisional Order to be confirmed by Parliament, extend the provisions of the Act to any other trade if the rate of wages prevailing in any branch of the trade is exceptionally low as compared with that in other employments, and the circumstances of the trade are such as to render the application of the Act expedient.

The Act provides for the establishment of Trade Boards, the chief business of which will be to fix minimum rates of wages for their trades. The Board of Trade may make an Order making a rate obligatory in cases to which it is applicable on all persons employing labour and on all persons employed. Until the issue of such an obligatory Order the minimum rate fixed by a Trade Board has only the limited operation indicated in section 7 of the Act. The provisions of this section are those to which it is particularly desired to draw the attention of the local authority.

[*The section* (*see* ante, *p.* 2112) *is set out.*]

The effect of the section, so far as the local authority are concerned, is that, pending the coming into full operation of any minimum rate of wages fixed by the Trade Board, the local authority are precluded from entering into contracts with any employer in the particular trade and area to which the rate is applicable, who has not given the specified notice to the Trade Board that he is willing that the minimum rate should be obligatory upon him.

Great importance is attached to the observance by local authorities of the statutory obligation thus imposed upon them, and it is requested that before entering into a contract the local authority will ascertain whether it involves employment to which a minimum rate of wages is applicable in pursuance of the section quoted, and, if so, whether the person to whom the contract is

proposed to be given is an employer by whom notice under the section has been given to the Trade Board. Appendix II.

No minimum rates of wages have yet been fixed under the Act, and some of the Trade Boards are only now on the point of being constituted. Notice of certain rates which they propose to fix, has, however, been given by the Trade Board for the hammered and dollied or tommied chain trade.

When rates have been fixed by any Trade Board information as to the registration of employers under section 7 of the Act will be obtainable on application to the secretary of the Trade Board in question at the office of Trade Boards, Trafalgar Buildings, Northumberland Avenue, London, S.W.

I am, Sir, your obedient servant,

H. C. MONRO, *Secretary.*

The Clerk to the Local Authority.

CREMATION.

REGULATIONS MADE BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, DATED MARCH 31ST, 1903, UNDER SECTION 7 OF THE CREMATION ACT, 1902.

I hereby, in pursuance of section 7 of the Cremation Act, 1902, make the following regulations :—

Definitions.

"Cremation authority" means any burial authority or any company or person by whom a crematorium has been established.

"Medical referee" means a medical referee or deputy medical referee appointed in pursuance of Regulation 10.

Maintenance and inspection of crematoria.

1. Every crematorium shall be—

(a) maintained in good working order ;

(b) provided with a sufficient number of attendants ; and

(c) kept constantly in a cleanly and orderly condition :

Provided that a crematorium may be closed by order of the cremation authority if not less than one month's notice be given by advertisement in two papers in the locality and by written notice fixed at the entrance to the crematorium.

The cremation authority shall give notice in writing to the Secretary of State of the opening or closing of any crematorium.

2. Every crematorium shall be open to inspection at any reasonable time by any person appointed for that purpose by the Secretary of State or by the Local Government Board.

Conditions under which cremations may take place.

3. No cremation of human remains shall take place except in a crematorium of the opening of which notice has been given to the Secretary of State.

4. It shall not be lawful to cremate the remains of any person who is known to have left a written direction to the contrary.

5. It shall not be lawful to cremate human remains which have not been identified.

6. No cremation shall be allowed until the death of the deceased has been duly registered, except where an inquest has been held and a certificate given by a coroner in Form E. (see Regulation 8).

7. No cremation shall be allowed to take place unless application therefor be made, and the particulars stated in the application be confirmed by statutory declaration, in accordance with Form A. in the schedule hereto.

The application must be signed and the statutory declaration made by an executor or by the nearest surviving relative of the deceased, or, if made by any other person, must show a satisfactory reason why the application is not made by an executor or by the nearest surviving relative.

8. No cremation shall be allowed to take place unless

(a) A certificate in Form B. be given by a registered medical practitioner who has attended the deceased during his last illness and who can certify definitely as to the cause of death, and a confirmatory medical certificate in Form C. be given by another medical practitioner, who must be qualified as prescribed in Regulation 9; or

(b) A post-mortem examination has been made by a medical practitioner expert in pathology, appointed by the cremation authority (or in case of emergency appointed by the medical referee), and a certificate given by him in Form D.; or

(c) An inquest has been held and a certificate has been given by the coroner in Form E.

No cremation shall take place except on the written authority of the medical referee given in Form F.

9. The confirmatory medical certificate in Form C., if not given by the medical referee, must be given by a registered medical practitioner of not less than five years' standing, who must either

(a) be appointed for the purpose by the cremation authority; or

(b) hold one of the following appointments: medical officer of health, police surgeon, certifying surgeon under the Factory and Workshop Act, 1901, medical referee under the Workmen's Compensation Act, 1897; or

(c) hold an appointment as physician or surgeon in a public general hospital containing not less than 50 beds.

10. Every cremation authority shall appoint a medical referee, who must be a registered medical practitioner of not less than five years' standing and must possess such experience and qualifications as will fit him for the discharge of the duties required of him by these regulations. If otherwise qualified he may be a person holding the office of coroner or of medical officer of health.

Every cremation authority shall also appoint a deputy medical referee possessing the like qualifications to act in the absence of the medical referee and in any case in which the medical referee has been the medical attendant of the deceased.

The cremation authority on making any such appointment shall notify the name, address, and qualifications of the medical referee or deputy medical referee to the Secretary of State.

11. It shall be lawful for the medical referee if he has personally investigated the cause of death to give a certificate in Form C., and if he has made the post-mortem examination to give a certificate in Form D. The medical referee, if a coroner, may himself give the coroner's certificate in Form E.

12. The duties of the medical referee shall be as follows:—

(1) He shall not allow any cremation to take place if it appears that the deceased left a written direction to the contrary.

(2) He shall not (except where an inquest has been held and a certificate given by a coroner in Form E.) allow any cremation to take place unless he is satisfied that the death of the deceased has been duly registered, by the production of a "Certificate of Registry of Death" on one of the forms provided by the Registrar-General for production in case of burial.

(3) He shall, before allowing the cremation, examine the application and certificates and ascertain that they are such as are required by these regulations and that the inquiry made by the persons giving the certificates has been adequate. He may make any inquiry with regard to the application and certificates that he may think necessary.

(4) He shall not allow the cremation unless he is satisfied that the application is made by an executor or by the nearest surviving relative of the deceased, or, if made by any other person, that the fact that the executor or nearest relative has not made the application is sufficiently explained, and that the person making the application is a proper person to do so.

(5) He shall not allow the cremation unless he is satisfied that the fact and cause of death have been definitely ascertained; and in particular, if the cause of death assigned in the medical certificates be such as, regard being had to all the circumstances, might be due to poison, to violence, to any illegal operation, or to privation or neglect, he shall require a post-mortem examination to be held, and if that fails to reveal the cause of death shall decline to allow the cremation unless an inquest be held and a certificate given by the coroner in Form E. Appendix II.

(6) If it appears that death was due to poison, to violence, to any illegal operation or to privation or neglect, or if there is any suspicious circumstance whatsoever, whether revealed in the certificates or otherwise coming to his knowledge, he shall decline to allow the cremation unless an inquest be held and a certificate given by the coroner in Form E.

(7) If a coroner has given notice that he intends to hold an inquest on the body, he shall not allow the cremation to take place until the inquest has been held.

(8) He may in any case decline to allow the cremation without stating any reason.

In the case of the remains of a person who has died in any place out of England the medical referee may accept a declaration containing the particulars prescribed in Form A. if it be made before any person having authority in that place to administer an oath or to take a declaration; and he may accept certificates in Forms B., C., and D., if they be signed by any medical practitioners who are shown to his satisfaction to possess qualifications substantially equivalent to those prescribed in the case of each certificate by these regulations.

13. The foregoing regulations, 5 to 12, shall not apply to the cremation of the remains of a deceased person who has already been buried for not less than one year. Such remains may be cremated, subject to such conditions as the Secretary of State may impose in the exhumation licence granted by him or otherwise; and any such cremation in which those conditions are not observed shall be deemed a contravention of these regulations.

14. In the case of any person dying of plague, cholera, or yellow fever on board ship or in a hospital or temporary place of reception of the sick provided by a port or other local authority under the Public Health Acts or by a hospital committee under the Isolation Hospital Acts, the medical referee, if satisfied as to the cause of death, may dispense with any of the requirements of Regulations 4, 5, 6, 7, 8, 9, and 12. These regulations may also be temporarily suspended or modified in any district during an epidemic or for other sufficient reason by an order of the Secretary of State on the application of a local authority.

15. Notwithstanding the foregoing regulations 6 to 12, the medical referee may permit the cremation of the remains of a stillborn child if it be certified to be stillborn by a registered medical practitioner after examination of the body, and if the referee after such inquiries as he may think necessary is satisfied that it was stillborn, and that there is no reason for further examination.

Disposition of ashes.

16. After the cremation of the remains of a deceased person the ashes shall be given into the charge of the person who applied for the cremation if he so desires. If not, they shall be retained by the cremation authority, and, in the absence of any special arrangement for their burial or preservation, they shall be decently interred in a burial ground or in land adjoining the crematorium reserved for the burial of ashes. In the case of ashes left temporarily in the charge of the cremation authority and not removed within a reasonable time, a fortnight's notice shall be given to the person who applied for the cremation before the remains are interred.

Registration of cremations, etc.

17. Every cremation authority shall appoint a registrar who shall keep a register of all cremations carried out by the cremation authority in Form G. He shall make the entries relating to each cremation immediately after the

Appendix II. cremation has taken place, except the entry in the last column, which he shall make as soon as the remains of the deceased have been handed to the relatives or otherwise disposed of.

18. All applications, certificates, statutory declarations and other documents relating to any cremation shall be marked with a number corresponding to the number in the register, shall be filed in order, and shall be carefully preserved by the cremation authority.

All such registers and documents shall be open to inspection at any reasonable hour by any person appointed for that purpose by the Secretary of State, the Local Government Board or the Chief Officer of any Police Force.

19. When any crematorium is closed as provided in Regulation 1, the cremation authority shall send all registers and documents relating to the cremations which have taken place therein to the Secretary of State, or otherwise dispose of them as he may direct.

20. The Secretary of State may make any inquiry he thinks fit as to the carrying out of these regulations in connection with any crematorium.

A. AKERS-DOUGLAS,

One of His Majesty's Principal Secretaries of State.

Home Office,
31*st March*, 1903.

SCHEDULE.

DRAFT FORMS.

FORM A.

Application for Cremation, with Statutory Declaration.

I, (*name of applicant*)
(*address*)
(*occupation*)
apply to the
to undertake the cremation of the remains of
(*name of deceased*)
(*address*)
(*occupation*)
(*age*) (*sex*)
(*whether married, widow, widower, or unmarried*)

The true answers to the questions set out below are as follows :—

1. Are you an executor or the nearest surviving relative of the deceased ?
2. If not, state
   (a) Your relationship to the deceased.
   (b) The reason why the application is made by you and not by an executor or any nearer relative.
3. Did the deceased leave any written directions as to the mode of disposal of his remains ? If so, what ?
4. Have the near relatives (*h*) of the deceased been informed of the proposed cremation ?
5. Has any near relative of the deceased expressed any objection to the proposed cremation ? If so, on what ground ?
6. What was the date and hour of the death of deceased ?
7. What was the place where deceased died ? (Give address and say whether own residence, lodgings, hotel, hospital, nursing home, etc.)
8. Do you know, or have you any reason to suspect, that the death of the deceased was due, directly or indirectly, to
   (a) violence ;
   (b) poison ;
   (c) privation or neglect ?
9. Do you know any reason whatever for supposing that an examination of the remains of the deceased may be desirable ?
10. Give name and address of the ordinary medical attendant of the deceased.

(*h*) The term "near relative" as here used includes widow or widower, parents, children above the age of 16, and any other relative usually residing with the deceased.

11. Give names and addresses of the medical practitioners who attended deceased during his last illness. Appendix II.

I do hereby solemnly and sincerely declare that all the particulars stated above are true, and that to the best of my knowledge and belief no material particular has been omitted; and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835.

(*Signature*)

(*i*) Declared at
the day of
before me,
(*Signature*)

FORM B.

Certificate of Medical Attendant.

I am informed that application is about to be made for the cremation of the remains of

(*name of deceased*)
(*address*)
(*occupation*)

Having attended the deceased before death, and seen and identified the body after death, I give the following answers to the questions set out below :—

1. On what date, and at what hour did he or she die ?

2. What was the place where the deceased died ? (Give address and say whether own residence, lodgings, hotel, hospital, nursing home, etc.)

3. Are you a relative of the deceased ? If so, state the relationship.

4. Have you, so far as you are aware, any pecuniary interest in the death of the deceased ?

5. Were you the ordinary medical attendant of the deceased ? If so, for how long ?

6. Did you attend the deceased during his or her last illness ? If so, for how long ?

7. When did you last see the deceased alive ? (Say how many days or hours before death.)

8. How soon after death did you see the body, and what examination of it did you make ?

9. What was the cause of death ? { Primary. Secondary.

(Specify the disease, injury, etc., and if possible distinguish the primary from the secondary cause as in the death certificate.)

What was its duration in years, months, or days ?

10. What was the mode of death ? (Say whether syncope, coma, exhaustion, convulsions, etc.)

What was its duration in days, hours, or minutes ?

11. State how far the answers to the last two questions are the result of your own observations, or are based on statements made by others. If on statements made by others, say by whom.

12. Did the deceased undergo any operation during the final illness or within a year before death ? If so, what was its nature, and who performed it ?

13. By whom was the deceased nursed during his or her last illness ? (Give names, and say whether professional nurse, relative, etc. If the illness was a long one, this question should be answered with reference to the period of four weeks before the death.)

14. Who were the persons (if any) present at the moment of death ?

15. In view of your knowledge of the deceased's habits and constitution, do you feel any doubt whatever as to the character of the disease or the cause of death ?

16. Do you know, or have you any reason to suspect, that the death of the deceased was due, directly or indirectly, to

(a) violence ;
(b) poison ;
(c) privation or neglect ?

17. Have you any reason whatever to suppose a further examination of the body to be desirable ?

18. Have you given the certificate required for registration of death ?

I hereby certify that the answers given above are true and accurate to the best of my knowledge and belief, and that there is no circumstance known to me which can

(*i*) This declaration must be made before a justice of the peace or a commissioner of oaths. If made before a commissioner it requires an impressed inland revenue stamp of 2*s*. 6*d*.

Appendix II. give rise to any suspicion that the death was due wholly or in part to any other cause than { disease / accident } or which makes it desirable that the body should not be cremated.

(*Signature*)
(*Address*)
(*Registered qualifications*)

(*Date*)

NOTE.—This certificate must be handed or sent in a closed envelope by the medical practitioner who signs it to the medical practitioner who is to give the confirmatory certificate below.

FORM C.

Confirmatory Medical Certificate.

I have examined the foregoing medical certificate, and have made personal inquiry as stated in my answers to the questions below :—

1. Have you seen the body of the deceased ?
2. Have you carefully examined the body externally ?
3. Have you made a post-mortem examination ?
4. Have you seen and questioned the medical practitioner who gave the above certificate ?
5. Have you seen and questioned any other medical practitioner who attended the deceased ?
6. Have you seen and questioned any person who nursed the deceased during his last illness, or who was present at the death ?
7. Have you seen and questioned any of the relatives of the deceased ?
8. Have you seen and questioned any other person ?

(In the answers to questions 5, 6, 7, and 8, give names and addresses of persons seen and say whether you saw them alone.)

I am satisfied that the cause of death was
and I certify that I know of no circumstance which can give rise to any suspicion that death was due wholly or in part to any other cause than { disease / accident } or which makes it desirable that the body should not be cremated.

(*Signature*)
(*Address*)
(*Date*)
(*Registered qualifications*)
(*Office*)

NOTE —The certificates in Forms B. and C. must be handed or sent in a closed envelope to the medical referee by one or other of the medical practitioners by whom they are given.

FORM D.

Certificate after Post-mortem Examination.

I hereby certify that, acting (*j*) *on the instructions of*
Medical Referee to the
I made a post-mortem examination of the remains of
(*name*)
(*address*)
(*occupation*)
The result of the examination is as follows :—
I am satisfied that the cause of death was
and that there is no reason *for making any toxicological analysis* (*k*) *or* for the holding of an inquest.

(*Signature*)
(*Address*)
(*Date*)
(*Registered qualification*)

(*j*) Where the medical referee himself gives this certificate, strike out the words in italics and insert "as."

(*k*) The words in italics should be omitted where a toxicological analysis has been made and its result is stated in this certificate or in a certificate attached to it.

FORM E.

Coroner's Certificate.

I hereby certify that I held an inquest on the body of
and that the verdict of the jury was as follows :—

Medical evidence was given by

I am satisfied from the evidence that the cause of death was
and that no circumstance exists which could render necessary any further examination of the remains or any analysis of any part of the body.

(*Date*)

Coroner.

FORM F.

Authority to Cremate.

Whereas application has been made for the cremation of the remains of

(*name* (*l*))
(*address*)
(*occupation*)

And whereas I have satisfied myself that all the requirements of the Cremation Act, 1902, and of the Regulations made in pursuance of that Act, have been complied with, that the cause of death has been definitely ascertained, and that there exists no reason for any further inquiry or examination :

I hereby authorise the Superintendent of the Crematorium at
to cremate the said remains.

(*Signature*)
Medical Referee to the

(*Date*)

NOTE.—This authority should be signed in duplicate—one copy to be retained with certificates and the other sent by the medical referee to the superintendent of crematorium.

FORM G.

Register of Cremations

carried out by
at the Crematorium at

No.	Date of cremation.	Name, residence, and occupation of deceased.	Age and sex.	Whether married or unmarried.	Date of death.	Name and address of person who applied for cremation.	Names and addresses of persons signing certificates.	District where death has been registered.	How ashes were disposed of.

NOTE.—Additional particulars may be added in the form of register by the cremation authority.

(*l*) In the case of a stillborn child in place of the name, address, and occupation, insert a description sufficient to identify the body, and in place of the words "that the cause of death has been definitely ascertained" insert the words "that the child was stillborn."

Appendix II.

DAIRIES, COWSHEDS, AND MILKSHOPS: AND TUBERCULOUS COWS.

See also "FOOD AND DRUGS," *post*, p. 2385.

THE DAIRIES, COWSHEDS, AND MILKSHOPS ORDER OF 1885.

(June 15th, 1885.)

At the Council Chamber, Whitehall, the 15th day of June, 1885.

By her Majesty's most Honourable Privy Council. Present:—Lord President Mr. Trevelyan.

The Lords and others of her Majesty's most Honourable Privy Council, by virtue and in exercise of the powers in them vested under the Contagious Diseases (Animals) Act, 1878 (*m*), and of every other power enabling them in this behalf, do order, and it is hereby ordered, as follows:

Short title. 1. This Order may be cited as the Dairies, Cowsheds and Milkshops Order of 1885 (*n*).

Extent. 2. This Order extends to England and Wales and Scotland only.

Commencement. 3. This Order shall commence and take effect from and immediately after the 30th day of June, one thousand eight hundred and eighty-five.

Interpretation. 4. In this Order—

The Act of 1878 means the Contagious Diseases (Animals) Act, 1878.

Other terms have the same meaning as in the Act of 1878 (*o*).

Revocation of former Order. 5. The Dairies, Cowsheds, and Milkshops Order of July, 1879, is hereby revoked: Provided that nothing in this Order shall be deemed to revive any Order of Council thereby revoked or to invalidate or make unlawful anything done before the commencement of this Order, or interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty incurred under, the said Order hereby revoked.

Registration of dairymen and others. 6.—(1) It shall not be lawful for any person to carry on in the district (*p*) of any local authority the trade of cowkeeper, dairyman, or purveyor of milk (*q*) unless he is registered as such therein in accordance with this article (*r*).

(*m*) 41 & 42 Vict. c. 74, s. 34, *ante*, note (*a*), p. 733.

(*n*) This Order is now to be deemed to have been made by the L. G. B.: see the Contagious Diseases (Animals) Act, 1886, s. 9 (6), *ante*, p. 732.

(*o*) Except that the L. G. B. is substituted for the Privy Council, and the local authority referred to throughout the Order means the urban and rural sanitary authorities throughout the country: see the Contagious Diseases (Animals) Act, 1886, s. 9 (1), (2), *ante*, p. 732. See also Art. 14, *post*, p. 2263.

(*p*) H. was summoned for carrying on the trade of a purveyor of milk in Marylebone without being registered in that district as required by this Article. He was registered in St. Pancras, where his premises were situated, but on one occasion he sold 1*d*. worth of milk from a churn on a hand-cart in a street in Marylebone. The magistrate held that he was not shown to have carried on the trade of a purveyor of milk in Marylebone by reason of this one transaction, and dismissed the summons, and his decision was upheld (*Emerton* v. *Hall* (1910), 74 J. P. 301; 102 L. T. 889).

(*q*) A farmer who kept a few cows but sold no milk was held under a similar enactment not to be carrying on the business of a dairyman or "cowkeeper" (*Umfreville* v. *London C. C.* (1896), 66 L. J. Q. B. 177; 61 J. P. 84). Keepers of a railway refreshment room sold glasses of milk occasionally (3 or 4 glasses a week) to any one asking for it: it was held that they did not carry on the trade of "purveyors of milk" within this Article (*Spiers and Pond, Ltd.* v. *Green*, [1912] 3 K. B. 576; 77 J. P. 11). It is intended to apply to persons who keep milkshops or dairies, and not to every person who sells a glass of milk, though possibly such a person must observe the "precautions" referrred to in Art. 13 (*ibid.*). It was held, in a Scotch case, that an ice cream manufacturer, though he used milk in the manufacture of his ice creams, was not a purveyor of milk within the meaning of this regulation (*Lang* v. *Pianta* (1894), 21 Ct. of Sess. Cas. (4th ser.), J. C. 20).

(*r*) As to the penalty for a breach of this Article, see Order of November 1st, 1886, *post*, p. 2264.

Appendix II.

(2) Every local authority shall keep a register of persons from time to time carrying on in their district the trade of cowkeepers, dairymen, or purveyors of milk, and shall from time to time revise and correct the register (*s*).

(3) The local authority shall register every such person (*t*), but the fact of such registration shall not be deemed to authorise such person to occupy as a dairy or cowshed any particular building or in any way preclude any proceedings being taken against such person for non-compliance with or infringement of any of the provisions of this Order or any regulation made thereunder.

(4) The local authority shall from time to time give public notice by advertisement in a newspaper circulating in their district, and, if they think fit, by placards, hand-bills, or otherwise, of registration being required, and of the mode of registration (*u*).

(5) A person who carries on the trade of cowkeeper or dairyman for the purpose only of making and selling butter or cheese, or both, and who does not carry on the trade of purveyor of milk, shall not for the purposes of registration, be deemed to be a person carrying on the trade of cowkeeper or dairyman, and need not be registered (*x*).

(6) A person who sells milk of his own cows in small quantities to his workmen or neighbours, for their accommodation, shall not, for the purposes of registration, be deemed, by reason only of such selling, to be a person carrying on the trade of cowkeeper, dairyman, or purveyor of milk, and need not, by reason thereof, be registered (*y*).

Construction of water-supply of new dairies and cowsheds.

7.—(1) It shall not be lawful for any person following the trade of cowkeeper or dairyman to begin to occupy as a dairy or cowshed any building not so occupied at the commencement of this Order, unless and until he first makes provision, to the reasonable satisfaction of the local authority, for the lighting, and the ventilation including air-space, and the cleansing, drainage, and water-supply of the same, while occupied as a dairy or cowshed.

(2) It shall not be lawful for any such person to begin so to occupy any such building without first giving one month's notice in writing to the local authority of his intention so to do (*z*).

Sanitary state of all dairies and cowsheds (*a*).

8. It shall not be lawful for any person following the trade of cowkeeper or dairyman to occupy as a dairy or cowshed any building, whether so occupied at the commencement of this Order or not, if and as long as the lighting, and

(*s*) As to the transfer of the old register, see 49 & 50 Vict. c. 32, s. 9 (6), (b), *ante*, p. 733.

(*t*) Note that the local authority cannot refuse to register any person applying for that purpose; but such registration does not afford any protection in respect of the keeping of a dairy, etc., in such a way as to contravene the provisions of the Order in other respects, or of any regulations made under it.

(*u*) Necessary Forms of Registration to be used in compliance with this requirement have been prepared and published by Messrs. Shaw & Sons, of Fetter Lane, E.C.

(*x*) See as to the meaning of the term "purveyor of milk," note (*p*), *ante*, p. 2260. There must apparently be a supplying or selling of milk in order to necessitate registration.

(*y*) This exception appears to extend to all persons who sell milk otherwise than as part of their trade or business. The object of registration is to secure supervision of all persons whose business consists wholly or in part of supplying or selling milk. Thus, a person who keeps one or two cows for the supply of milk for his own household does not require to be registered merely because he sells his surplus milk to his neighbours. On the other hand, a person who keeps cows for the purpose of selling his milk must be registered. It may be difficult, in some cases, to decide whether a person is entitled to the benefit of this exemption.

A farmer who kept cows for the supply of his family and for amusement, and who occasionally allowed his neighbours and a dairyman to have a few quarts of milk, was held not to be a cowkeeper or dairyman within the corresponding provision of the repealed Order of 1879 (*Southwell* v. *Lewis* (1881), 45 J. P. 206).

(*z*) This article applies only to new dairies and cowsheds. It does not apply to dairies and cowsheds already occupied.

(*a*) This article applies both to old and to new dairies and cowsheds. It is presumably for the local authority to decide whether the lighting, ventilation, etc., are reasonable and proper. The regulations made under Art. 13 should prescribe what the local authority considers reasonable and proper.

Appendix II. the ventilation including air-space, and the cleansing, drainage, and water-supply thereof, are not such as are necessary or proper—

(a) for the health and good condition of the cattle therein ; and

(b) for the cleanliness of milk-vessels used therein for containing milk for sale ; and

(c) for the protection of the milk therein against infection or contamination.

Contamination of milk.

9. It shall not be lawful for any person following the trade of cowkeeper or dairyman or purveyor of milk, or being the occupier of a milkstore or milkshop (*b*)—

(a) to allow any person suffering from a dangerous infectious disorder (*c*), or having recently been in contact with a person so suffering, to milk cows or to handle vessels used for containing milk for sale or in any way to take part or assist in the conduct of the trade or business of the cowkeeper or dairyman, purveyor of milk, or occupier of a milk-store or milkshop, so far as regards the production, distribution, or storage of milk ; or

(b) if himself so suffering or having recently been in contact as aforesaid, to milk cows, or handle vessels used for containing milk for sale, or in any way to take part in the conduct of his trade or business, as far as regards the production, distribution, or storage of milk—

until in each case all danger therefrom of the communication of infection to the milk or of its contamination has ceased (*d*).

10. It shall not be lawful for any person following the trade of cowkeeper or dairyman or purveyor of milk, or being the occupier of a milkstore or milk-shop, after the receipt of notice of not less than one month from the local authority calling attention to the provisions of this article, to permit any water-closet, earth-closet, privy, cesspool, or urinal to be within, communicate directly with, or ventilate into any dairy or any room used as a milkstore or milkshop (*e*).

11. It shall not be lawful for any person following the trade of cowkeeper or dairyman or purveyor of milk, or being the occupier of a milkstore or milk-shop to use a milkstore or milkshop in his occupation, or permit the same to be used as a sleeping apartment, or for any purpose incompatible with the proper preservation of the cleanliness of the milkstore or milkshop, and of the milk-vessels and milk therein, or in any manner likely to cause contamination of the milk therein.

12. It shall not be lawful for any person following the trade of cowkeeper or dairyman or purveyor of milk to keep any swine in any cowshed or other building used by him for keeping cows, or in any milkstore or other place used by him for keeping milk for sale.

Regulations of local authority (*f*).

13. A local authority may from time to time make regulations for the following purposes, or any of them (*g*).

(a) For the inspection of cattle in dairies.

(*b*) The purveyor of milk is here mentioned as if he were a distinct person from the mere retail seller. But see the case in note (*p*), *ante*, p. 2260.

(*c*) Note the word "dangerous." It means, apparently, dangerous to life, and applies to such diseases as small-pox, scarlet fever, and the like. It probably also applies to measles.

(*d*) It will be prudent in all cases to obtain medical advice as to whether the danger has ceased.

(*e*) Notice under this article must proceed from the local authority. Notice from an officer will not be sufficient unless first directed to be given by the local authority. See *St. Leonard's, Shoreditch* v. *Holmes* (1885), 50 J. P. 132. The notice should be in writing, though the text does not so require, in order that there may be no dispute as to its terms should legal proceedings be afterwards founded upon it.

(*f*) Model Regulations have been prepared by the L. G. B. See *post*, p. 2265.

(*g*) These regulations do not require confirmation, except as provided by the next article. They should be adopted by resolution, and the resolution should be entered on the minutes. The regulations should be identified by the minute, and sealed with the seal of the local authority.

Appendix II.

(b) For prescribing and regulating the lighting, ventilation (*h*), cleansing (*i*), drainage, and water-supply of dairies and cowsheds in the occupation of persons following the trade of cowkeepers or dairymen.

(c) For securing the cleanliness of milkstores, milkshops, and of milk-vessels used for containing milk for sale by such persons.

(d) For prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination (*k*).

Provisions as to regulations of local authority.

14. The following provisions shall apply to regulations made by a local authority under this Order:

(1) Every regulation shall be published by advertisement in a newspaper circulating in the district of the local authority (*l*).

(2) The local authority shall send to the Privy Council (*m*) a copy of every regulation made by them not less than one month before the date named in such regulation for the same to come into force.

(3) If at any time the Privy Council (*m*) are satisfied on inquiry, with respect to any regulation, that the same is of too restrictive a character, or otherwise objectionable, and direct the revocation thereof, the same shall not come into operation, or shall thereupon cease to operate, as the case may be.

Existence of disease among cattle.

15. If at any time disease (*n*) exists among the cattle in a dairy or cowshed, or other building or place, the milk of a diseased cow therein—

(a) shall not be mixed with other milk; and

(b) shall not be sold or used for human food; and

(c) shall not be sold or used for food of swine, or other animals, unless and until it has been boiled.

Acts of local authorities.

16.—(1) All orders and regulations made by a local authority under the Dairies, Cowsheds and Milkshops Order of July, 1879, or any Order revoked thereby, and in force at the making of this Order shall, as far as the same are not varied by or inconsistent with this Order, remain in force until altered or revoked by the local authority.

(2) Forms of Registers and other forms which have been before the making of this Order prepared for use by a local authority under the Dairies, Cowsheds and Milkshops Order of July, 1879, or any Order revoked thereby may be used, as far as they are suitable for the purposes of this Order.

Scotland.

17. Nothing in this Order shall be deemed to interfere with the operation of the Cattle Sheds in Burghs (Scotland) Act, 1866.

(*h*) This article authorises a regulation requiring 800 cubic feet of air-space for each cow (*Baker* v. *Williams*, [1898] 1 Q. B. 23). As to the meaning of "habitually turned out during a portion of each day" in the Model Regulations, see Correspondence, 63 J. P. 649.

(*i*) In Ireland a regulation requiring manure to be removed from cowsheds at intervals not exceeding 7 days was supported in *Dublin Corporation* v. *Menton* (1892), 30 L. R. Ir. 451.

(*k*) See *London C. C.* v. *Edwards*, [1898] 2 Q. B. 75; 62 J. P. 377, as to the construction of the Model Regulation on this point. The regulations should also provide for the imposing of penalties. See the note to the Contagious Diseases (Animals) Act, 1886, s. 9 (5), *ante*, p. 732.

(*l*) It may be advisable also to publish them by placards.

(*m*) Now the L. G. B.: see the Order of November 1st, 1886, *post*.

(*n*) The word "disease" has the meaning assigned to it by the Act of 1878 (see Art. 4 of this Order, *ante*); it, therefore, means cattle plague, pleuro-pneumonia, and foot and mouth disease. Further, by virtue of Art. 2 of the Dairies, Cowsheds, and Milkshops Order of 1899, *post*, p. 2265, it includes, in the case of a cow, such disease of the udder as shall be certified by a veterinary surgeon to be tubercular.

Appendix II.

THE DAIRIES, COWSHEDS, AND MILKSHOPS AMENDING ORDER, 1886.

(November 1st, 1886.)

TO THE MAYOR AND COMMONALTY AND CITIZENS of the City of London, acting by the Mayor, Aldermen, and Commons of that City in Common Council assembled; To the Metropolitan Board of Works; To the several Urban and Rural Sanitary Authorities for the time being in England and Wales; And to all others whom it may concern.

WHEREAS [*recites section* 34 *of the Contagious Diseases* (*Animals*) *Act*, 1878 (ante, *p.* 733), *Article* 14 *of the* 1885 *Order* (ante, *p.* 2263), *and section* 9 (1), (2), (5) *and* (6) (*a*) *of the Contagious Diseases* (*Animals*) *Act*, 1886 (ante, *p.* 732)].

And whereas it is expedient that the Order of 1885 should be altered as hereinafter mentioned, and that penalties should be imposed for offences against such Order:

Now therefore, we, the Local Government Board, in pursuance of the powers vested in us by the Act of 1866, hereby order as follows:—

ART. 1. This Order may be cited as "The Dairies, Cowsheds, and Milkshops Amending Order of 1886."

ART. 2. Article 14 of the Order of 1885 shall be altered by the substitution therein of the words "Local Government Board" for the words "Privy Council" occurring therein.

ART. 3. If any person is guilty of an offence against the Order of 1885, he shall for every such offence be liable to a penalty of five pounds, and in the case of a continuing offence to a further penalty of forty shillings for each day after written notice of the offence from the local authority.

Provided, nevertheless, that the justices or court before whom any complaint may be made, or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this Order.

ART. 4. In this Order the expression "local authority" means—

In the city of London and the liberties thereof, the mayor and commonalty and citizens of the city of London, acting by the mayor, aldermen, and commons of that city in common council assembled:

In the metropolis, except the city of London and the liberties thereof, the Metropolitan Board of Works:

Elsewhere than in the metropolis, the urban or rural sanitary authority.

Given under the Seal of Office of the Local Government Board, this first day of November, in the year one thousand eight hundred and eighty-six.

(L.S.) CHAS. T. RITCHIE, *President*.

HUGH OWEN, *Secretary*.

THE DAIRIES, COWSHEDS, AND MILKSHOPS ORDER OF 1899.

(February 7th, 1899.)

TO THE LONDON COUNTY COUNCIL; To the Mayor and Commonalty and Citizens of the City of London, acting by the Mayor, Aldermen, and Commons of that City in Common Council assembled; To the Mayor, Aldermen and Burgesses of the several County Boroughs for the time being in England and Wales; To the several Urban and Rural District Councils for the time being in England and Wales; And to all others whom it may concern.

WHEREAS on the 15th day of June, 1885, her Majesty's most Honourable Privy Council (hereinafter referred to as "the Privy Council"), in pursuance of the statutory provisions in that behalf, made an Order (hereinafter referred

to as "the Order"), which is known as "The Dairies, Cowsheds, and Milkshops Order of 1885";

And whereas certain powers of the Privy Council, including the power of altering or revoking the Order, have been transferred to us, the Local Government Board; and, in pursuance of such powers, the Order has been altered by an Order (hereinafter referred to as "the amending Order"), which was made by us on the 1st day of November, 1886, and is known as "The Dairies, Cowsheds, and Milkshops Amending Order of 1886";

And whereas it is expedient that the Order as altered by the amending Order should be further altered:

Now therefore, in pursuance of the powers vested in us in that behalf, we hereby Order as follows:

ART. 1.—This Order may be cited as "The Dairies, Cowsheds, and Milkshops Order of 1899."

ART. 2.—Article 15 of the Order (*o*) shall be altered so that, for the purposes of the provisions of paragraphs (a) and (b) thereof the expressions in the said Article which refer to disease shall include, in the case of a cow, such disease of the udder as shall be certified by a veterinary surgeon to be tubercular; and the Order and the amending Order shall apply and be construed with the modifications necessary to give effect to this Article.

Given under the Seal of Office of the Local Government Board, the seventh day of February, in the year one thousand eight hundred and ninety-nine.

(L.S.) HENRY CHAPLIN, *President*.

S. B. PROVIS, *Secretary*.

Date of publication in the London Gazette, February 10th, 1899.

MODEL REGULATIONS: DAIRIES, COWSHEDS, AND MILKSHOPS.

(Draft Form.)

REGULATIONS

MADE BY THE (1) WITH RESPECT TO DAIRIES, COWSHEDS, AND MILKSHOPS IN THE (2) .

INTERPRETATION.

1. Throughout these regulations the expression "the council" means the (1) , the expression "the district" means the (2) , the expression "cowshed" includes any dairy in which milking cows may be kept, and the expression "cowkeeper" means any person following the trade of a cowkeeper or dairyman who is, or is required to be, registered under the Dairies, Cowsheds, and Milkshops Order of 1885.

FOR THE INSPECTION OF CATTLE IN DAIRIES.

2. Every occupier of a dairy wherein any cattle may be kept, and which the medical officer of health, or the inspector of nuisances, or any other officer of the council specially authorised by them in that behalf, may visit for the purpose of inspecting cattle, and every person for the time being having the care or control of any such dairy, or of any cattle therein, shall afford such medical officer of health, inspector of nuisances, or officer, all reasonable assistance that may, for the purpose of the inspection, be required by him.

(*o*) *Ante*, p. 2263.

Appendix II.

FOR PRESCRIBING AND REGULATING THE LIGHTING, VENTILATION, CLEANSING, DRAINAGE, AND WATER SUPPLY OF COWSHEDS AND DAIRIES IN THE OCCUPATION OF PERSONS FOLLOWING THE TRADE OF COWKEEPERS OR DAIRYMEN.

PART I.

The regulations in this Part shall apply to cowsheds the cows from which are habitually grazed on grass land during the greater part of the year, and, when not so grazed, are habitually turned out during a portion of each day.

Lighting.

3. Every cowkeeper shall provide that every cowshed in his occupation shall be sufficiently lighted with windows, whether in the sides or roof thereof.

Ventilation.

4. Every cowkeeper shall cause every cowshed in his occupation to be sufficiently ventilated, and for this purpose to be provided with a sufficient number of openings into the external air to keep the air in the cowshed in a wholesome condition.

Cleansing.

5.—(1) Every cowkeeper shall cause every part of the interior of every cowshed in his occupation to be thoroughly cleansed from time to time as often as may be necessary to secure that such cowshed shall be at all times reasonably clean and sweet.

(2) Such person shall cause the ceiling or interior of the roof, and the walls of every cowshed in his occupation to be properly lime-washed *twice* at least in every year, that is to say, once during the month of May and once during the month of October, and at such other times as may be necessary.

Provided that this requirement shall not apply to any part of such ceiling, roof or walls, that may be properly painted, or varnished, or constructed of or covered with any material such as to render the lime-washing unsuitable or inexpedient, and that may be otherwise properly cleansed.

(3) He shall cause the floor of every such cowshed to be thoroughly swept, and all dung and other offensive matter to be removed from such cowshed as often as may be necessary, and not less than *once* in every day.

Drainage.

6.—(1) Every cowkeeper shall cause the drainage of every cowshed in his occupation to be so arranged that all liquid matter which may fall or be cast upon the floor may be conveyed by a suitable open channel to a drain inlet situate in the open air at a proper distance from any door or window of such cowshed, or to some other suitable place of disposal which is so situate.

(2) He shall not cause or suffer any inlet to any drain of such cowshed to be within such cowshed.

Water Supply.

7.—(1) Every cowkeeper shall keep in, or in connection with, every cowshed in his occupation a supply of water suitable and sufficient for all such purposes as may from time to time be reasonably necessary.

(2) He shall cause any receptacle which may be provided for such water to be emptied and thoroughly cleansed from time to time as often as may be necessary to prevent the pollution of any water that may be stored therein, and where such receptacle is used for the storage only of water he shall cause it to be properly covered and ventilated, and so placed as to be at all times readily accessible.

PART II.

The regulations in Part I., and also the following regulation, shall apply to all cowsheds other than those the cows from which are habitually grazed on grass land during the greater part of the year, and, when not so grazed, are habitually turned out during a portion of each day (*p*).

8. A cowkeeper shall not cause or allow any cowshed in his occupation to be occupied by a larger number of cows than will leave not less than *eight hundred feet* (*q*) of air space for each cow.

Provided as follows:

(a) In calculating the air space for the purposes of this regulation, no space shall be reckoned which is more than *sixteen feet* above the floor; but if the roof or ceiling is inclined, then the mean height of the same above the floor may be taken as the height thereof for the purposes of this regulation.

(b) This regulation shall not apply to any cowshed constructed and used before the date of these regulations coming into effect, until two years after that date.

PART III.

9. In this Part, the expression "dairy" means a dairy in which cattle are not kept.

Lighting.

10. Every cowkeeper shall provide that every dairy in his occupation shall be sufficiently lighted with windows, whether in the sides or roof thereof.

Ventilation.

11. Every cowkeeper shall cause every dairy in his occupation to be sufficiently ventilated, and for this purpose to be provided with a sufficient number of openings into the external air to keep the air in the dairy in a wholesome condition.

Cleansing.

12.—(1) Every cowkeeper shall cause every part of the interior of every dairy in his occupation to be thoroughly cleansed from time to time as often as may be necessary to secure that such dairy shall be at all times reasonably clean and sweet.

(2) He shall cause the floor of every such dairy to be thoroughly cleansed with water at least *once* in every day.

Drainage.

13.—(1) Every cowkeeper shall cause the drainage of every dairy in his occupation to be so arranged that all liquid matter which may fall or be cast upon the floor may be conveyed by a suitable open channel to the outside of such dairy, and may there be received in a suitable gully communicating with a proper and sufficient drain.

(2) He shall not cause or suffer any inlet to any drain of such dairy to be within such dairy.

Water Supply.

14.—(1) Every cowkeeper shall cause every dairy in his occupation to be provided with an adequate supply of good and wholesome water for the cleansing of such dairy and of any vessels that may be used therein for containing milk, and for all other reasonable and necessary purposes in connection with the use thereof.

(*p*) See Correspondence, 63 J. P. 649.
(*q*) See *Baker* v. *Williams*, *ante*, p. 2263.

Appendix II.

(2) He shall cause every cistern or other receptacle in which any such water may be stored to be properly covered and ventilated, and so placed as to be at all times readily accessible.

(3) He shall cause every such cistern or receptacle to be emptied and thoroughly cleansed from time to time as often as may be necessary to prevent the pollution of any water that may be stored therein.

FOR SECURING THE CLEANLINESS OF MILKSTORES, MILKSHOPS, AND OF MILK-VESSELS USED FOR CONTAINING MILK FOR SALE BY PERSONS FOLLOWING THE TRADE OF COWKEEPERS OR DAIRYMEN.

Cleanliness of Milkstores and Milkshops.

15. Every cowkeeper who is the occupier of a milkstore or milkshop shall cause every part of the interior of such milkstore or milkshop to be thoroughly cleansed from time to time as often as may be necessary to maintain such milkstore or milkshop in a thorough state of cleanliness.

Cleanliness of Milk-Vessels.

16.—(1) Every cowkeeper shall from time to time as often as may be necessary cause every milk-vessel that may be used by him for containing milk for sale to be thoroughly cleansed with steam or clean boiling water, and shall otherwise take all proper precautions for the maintenance of such milk-vessel in a constant state of cleanliness.

(2) He shall, on every occasion when any such vessel shall have been used to contain milk, or shall have been returned to him after having been out of his possession, cause such vessel to be forthwith so cleansed.

FOR PRESCRIBING PRECAUTIONS TO BE TAKEN BY PURVEYORS OF MILK AND PERSONS SELLING MILK BY RETAIL AGAINST INFECTION OR CONTAMINATION (*r*).

17.—(1) Every purveyor of milk or person selling milk by retail shall take all reasonable and proper precautions, in and in connection with the storage and distribution of the milk, and otherwise, to prevent the exposure of the milk to any infection or contamination.

(2) He shall not deposit or keep any milk intended for sale—

(a) in any room or place where it would be liable to become infected or contaminated by impure air, or by any offensive, noxious, or deleterious gas or substance, or by any noxious or injurious emanation, exhalation, or effluvium ; or

(b) in any room used as a kitchen or as a living room ; or

(c) in any room or building, or part of a building communicating directly by door, window, or otherwise with any room used as a sleeping room, or in which there may be any person suffering from any infectious or contagious disease, or which may have been used by any person suffering from any such disease and may not have been properly disinfected ; or

(d) in any room or building or part of a building in which there may be any direct inlet to any drain.

(3) He shall not keep milk for sale, or cause or suffer any such milk to be placed, in any vessel, receptacle or utensil which is not thoroughly clean.

(4) He shall cause every vessel, receptacle or utensil used by him for containing milk for sale to be thoroughly cleansed with steam or clean boiling water after it shall have been used, and to be maintained in a constant state of cleanliness.

(5) He shall not cause or suffer any cow belonging to him or under his care or control to be milked for the purpose of obtaining milk for sale—

(a) Unless, at the time of milking, the udder and teats of such cow are thoroughly clean ; and

(*r*) See *London C. C.* v. *Edwards*, *ante*, p. 2263.

(b) Unless the hands of the person milking such cow, also, are thoroughly clean and free from all infection and contamination. **Appendix II.**

PENALTIES.

18. Every person who shall offend against any of the foregoing regulations shall be liable for every such offence to a penalty of *five pounds*, and in the case of a continuing offence to a further penalty of *forty shillings* for each day after written notice of the offence from the council.

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this regulation.

COMMENCEMENT OF THE REGULATIONS.

19. These regulations shall come into force on and after the day of 18 .

REVOCATION OF REGULATIONS (3).

20. From and after the date on which these regulations shall come into force, all regulations heretofore made under, or having effect in pursuance of the Dairies, Cowsheds and Milkshops Order of 1885, shall, so far as the same are now in force in the district, be revoked.

(1) Mayor, aldermen, and burgesses of the borough of , acting by the council, *or* urban (*or* rural) district council of , *as the case may be.*

(2) Borough *or* urban (*or* rural) district of , *as the case may be.*

(3) If this clause is not included in the series submitted to the Local Government Board for approval, it should be stated whether or not there are any regulations in force upon the subject.

DAIRIES, COWSHEDS, AND MILKSHOPS (SANITARY AUTHORITIES, OTHER THAN TOWN COUNCILS, WHERE NO DAIRY REGULATIONS ARE IN FORCE)—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
March 7th, 1889.

SIR,—I am directed by the Local Government Board to advert to their circular letter of the 20th October, 1886, in which they drew the attention of the sanitary authority to section 9 of the Contagious Diseases (Animals) Act, 1886 (*s*), which transferred to the Board and to urban and rural sanitary authorities in their several districts, respectively, certain powers relating to the regulation of dairies, cowsheds, and milkshops, formerly exercised by the Privy Council and the local authorities acting under the Contagious Diseases (Animals) Act, 1878.

Amongst the powers thus transferred was that given by Article 13 of the Dairies, Cowsheds, and Milkshops Order of 1885 (*t*), issued by the Privy Council, and the effect was to enable every urban and rural sanitary authority from time to time to make regulations for the following purposes, or any of them :

(a) For the inspection of cattle in dairies ;
(b) For prescribing and regulating the lighting, ventilation, cleansing drainage, and water supply of dairies and cowsheds in the occupation of persons following the trade of cowkeepers or dairymen ;
(c) For securing the cleanliness of milkstores, milkshops, and of milk-vessels used for containing milk for sale by such persons ;
(d) For prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination.

(*s*) *Ante*, p. 732. (*t*) *Ante*, p. 2262.

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Moreover, section 9 (5) of the Act of 1886 provided that penalties might be imposed for offences against such regulations.

As the Board pointed out in the letter above referred to, the regulations made by a county authority under the Dairies, Cowsheds, and Milkshops Order of 1885, or under previous Orders of the Privy Council, so far as they extend to the district of any particular sanitary authority, are to be deemed to have been made by such authority. This provision, however, applies only to counties where there were regulations in force at the passing of the Act of 1886, and in the present instance the Board find that, at the time of the passing of the Act, there were no regulations in force in the county in which the district of the sanitary authority is situate.

By Article 14 (2) of the Order of 1885 (*u*), above mentioned, as amended by the Dairies, Cowsheds, and Milkshops Amending Order of 1886, a copy of every regulation made by the sanitary authority is required to be sent to the Board "not less than one month before the date named in such regulation for the same to come into force."

The Board have not received a copy of any regulation or series of regulations made by the sanitary authority on the subject in question, and they infer, therefore, that no such regulations have been made. Under these circumstances the Board are desirous of impressing upon the sanitary authority the importance of exercising the powers conferred upon them in this matter by Article 13 of the Order of 1885, and of urging them to take steps to frame regulations for their district.

The Board may add that model regulations have been issued by Messrs. Knight & Co., 90, Fleet Street, E.C., Messrs. Shaw & Sons, Fetter Lane, E.C., and Messrs. Hadden, Best & Co., West Harding Street, E.C., and the Board would suggest that the sanitary authority should base their regulations on one of these series.

A draft of any regulations proposed to be made by the sanitary authority should be sent to the Board before they are adopted.

I am, Sir, your obedient servant,

HUGH OWEN, *Secretary.*

To the Clerk to the Sanitary Authority.

DAIRIES, COWSHEDS AND MILKSHOPS ORDER—REPORT OF ROYAL COMMISSION ON TUBERCULOSIS (COUNCILS OF BOROUGHS AND URBAN DISTRICTS)—CIRCULAR.

[*On the same date a circular identical in terms so far as applicable to rural councils was issued to such councils.*]

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
March 11th, 1899.

SIR,—I am directed by the Local Government Board to advert to (1) the Dairies, Cowsheds, and Milkshops Order of 1885 (*x*), and (2) the report made last year by the Royal Commission on Tuberculosis, and especially to the paragraphs in that report which relate (a) to milk, (b) to the qualifications of meat inspectors, and (c) to the principles which should be observed as regards the seizure of tuberculous meat intended for the food of man.

DAIRIES, COWSHEDS, AND MILKSHOPS ORDER.

The council are empowered by Article 13 of the Dairies, Cowsheds, and Milkshops Order of 1885 (*y*) to make regulations for the following purposes, or any of them:

(a) For the inspection of cattle in dairies.

(b) For prescribing and regulating the lighting, ventilation, cleansing, drainage, and water-supply of dairies and cowsheds in the occupation of persons following the trade of cowkeepers or dairymen.

(*u*) *Ante*, p. 2263. (*x*) *Ante*, p. 2260. (*y*) *Ante*, p. 2262.

(c) For securing the cleanliness of milkstores, milkshops, and of milk-vessels used for containing milk for sale by such persons.

(d) For prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination.

Representations have been made to the Board to the effect that it would be desirable that they should issue model regulations for the guidance of councils in making regulations under this Article, but they have deferred doing so pending the Report of the Royal Commission on Tuberculosis.

That report having been made, the Board have caused some model regulations to be prepared, and two copies of them are enclosed.

It will be observed that No. 8 of the regulations, which deals with the question of air-space in cowsheds, does not apply to cowsheds the cows from which are habitually grazed on grass land during the greater part of the year, and, when not so grazed, are habitually turned out during a portion of each day, and it is obvious that a regulation on this subject which might be adapted to cowsheds in towns, where the cows are kept and fed within the building, might be unsuitable for cowsheds in the country where the cows are regularly grazed on grass land during the greater part of the year, and are during the rest of the year usually turned out for a portion of each day.

The Royal Commission, in their recommendations, drew a distinction between the rules which should be observed on this subject as regards cowsheds situate in populous and those situate in non-populous places, but no indication was given as to the means by which the distinction was to be made. It is clear that it could not be accomplished by any test of population or by adopting the geographical limits of urban and rural districts without creating anomalies which would be indefensible.

Neither is it easy to see how the distinction can be carried out except upon the plan suggested by the Board, which seeks to give effect to the chief difference between cowsheds in towns and cowsheds in the country, or, in other words, between the case of cows which are kept entirely or as a rule indoors, and that of cows which are usually turned out to graze.

It will be noticed that No. 4 of the Model Regulations, which provides that every cowkeeper must cause every cowshed in his occupation to be sufficiently ventilated, and for this purpose to be provided with a sufficient number of openings into the external air to keep the air in the cowshed in a wholesome condition, applies in both classes of cases.

If the council have not already made regulations under the Order of 1885, the Board think that they should do so, and that any such regulations would with advantage be based on the model clauses. If the council have already made regulations under the Order, the model clauses may usefully be considered in connection with any fresh regulations or amendment of the existing code which the council may propose to make.

The Board's confirmation of any regulations which may be made by the council will not be required, but if at any time the Board are satisfied on inquiry with respect to any regulation that the same is of too restrictive a character, or otherwise objectionable, they may direct its revocation; and the Board suggest that the draft of any regulations which the council may propose to make should be sent to them for consideration before the regulations are formally adopted.

REPORT OF THE TUBERCULOSIS COMMISSION.—MILK.

Article 15 of the Dairies, Cowsheds, and Milkshops Order of 1885 (*a*) provides that if at any time disease exists among the cattle in a dairy or cowshed, or other building or place, the milk of a diseased cow therein (a) shall not be mixed with other milk; and (b) shall not be sold or used for human food.

The term "a disease" in the Order is limited to those diseases which were included under the Contagious Diseases (Animals) Act, 1878, of which tuberculosis is not one, and the Royal Commission on Tuberculosis state in paragraph 39 of their Report that "the evidence abundantly shows how this fact has

(*a*) *Ante*, p. 2263.

Appendix II. precluded local authorities from any attempt to deal with tuberculosis in milch cows, although they may have shown themselves alive to the danger and anxious to provide a remedy," and they express the opinion that "it is desirable that the Order should be made applicable to all diseases of the udder in cows of which the milk is offered for sale."

The Board have issued an Order to amend Article 15 of the Order of 1885 by providing that, for the purposes of paragraphs (a) and (b) of the Article, reference to disease shall include, in the case of a cow, such disease of the udder as shall be certified by a veterinary surgeon to be tubercular. The Board think that it will be competent for the council to employ and pay a veterinary surgeon with a view of obtaining a certificate under the Article, as amended, or to appoint him as an officer for this purpose, if they think fit to do so. Two copies of the amending Order are enclosed.

QUALIFICATION OF MEAT INSPECTORS.

Under section 116 of the Public Health Act, 1875 (38 & 39 Vict. c. 55) (*c*), any medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase or meat exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man. If the animal, carcase or meat appears to the medical officer of health or inspector of nuisances to be diseased or unsound or unwholesome, or unfit for the food of man, he may seize and carry it away in order to have it dealt with by a justice. Under section 131 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34) (*d*), which is incorporated with the Public Health Act, 1875, the inspector of nuisances, the officer of health or any other officer appointed by the council for the purpose, may at all reasonable times enter and inspect any building or place within the district kept or used for the sale of butchers' meat or for slaughtering cattle, and examine whether any cattle or the carcase of any cattle is deposited there. If the officer finds any cattle or the carcase or part of the carcase of any beast which appears unfit for the food of man, he may seize and carry the same before a justice, so that it may be dealt with.

Moreover, where the council are in a position to establish or regulate markets under section 167 of the Public Health Act, any inspector of provisions appointed by them may, under section 15 of the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14) (*e*), which is incorporated with the Public Health Act, seize any unwholesome meat sold or exposed for sale in the market and carry the same before a justice to be dealt with.

The Royal Commission on Tuberculosis considered that meat inspectors should possess certain qualifications. Their recommendation on the subject will be found on page 21 of their Report and is as follows:

"We recommend that in future no person be permitted to act as a meat inspector until he has passed a qualifying examination, before such authority as may be prescribed by the Local Government Board (or Board of Agriculture), on the following subjects:

"(a) The law of meat inspection, and such bye-laws, regulations, etc., as may be in force at the time he presents himself for examination.

"(b) The names and situations of the organs of the body.

"(c) Signs of health and disease in animals destined for food, both when alive and after slaughter.

"(d) The appearance and character of fresh meat, organs, fat, and blood, and the conditions rendering them, or preparations from them, fit and unfit for human food."

At present a person cannot be required to pass a qualifying examination of the kind referred to before he acts as a meat inspector; but it appears to the Board that, in the case of a borough or urban district, where the work connected with the proper discharge of the duty of meat inspection is sufficient to justify the appointment of a separate officer for the purpose, it is very desirable that such an appointment should be made, and that the council

(*c*) *Ante*, p. 215. (*d*) *Ante*, p. 1437. (*e*) *Ante*, p. 1388.

Appendix II.

should satisfy themselves that the person appointed possesses adequate knowledge of the subjects mentioned in the recommendation of the Royal Commission.

In the smaller districts, where the work of meat inspection is not sufficient to render necessary the appointment of a separate officer, the Board consider that regard should be had to these qualifications in making future appointments to the office of inspector of nuisances.

INSTRUCTIONS TO MEAT INSPECTORS WITH REGARD TO TUBERCULOSIS IN ANIMALS INTENDED FOR FOOD.

The Royal Commission recommended that the Board should be " empowered to issue instructions from time to time for the guidance of meat inspectors, prescribing the degree of tubercular disease which, in the opinion of the Board, should cause a carcase, or part thereof, to be seized.

" Pending the issue of such instructions we are of opinion that the following principles should be observed in the inspection of tuberculous carcases of cattle :

" (a) When there is miliary tuberculosis of both lungs . . . . " (b) When tuberculous lesions are present on the pleura and peritoneum . . . . " (c) When tuberculous lesions are present in the muscular system or in the lymphatic glands embedded in or between the muscles . . " (d) When tuberculous lesions exist in any part of an emaciated carcase	The entire carcase and all the organs may be seized.
" (a) When the lesions are confined to the lungs and the thoracic lymphatic glands . . . " (b) When the lesions are confined to the liver . " (c) When the lesion sare confined to the pharyngeal lymphatic glands . . . . . " (d) When thel esions are confined to any combination of the foregoing, but are collectively small in extent	The carcase, if otherwise healthy, shall not be condemned, but every part of it containing tuberculous lesions shall be seized.

" In view of the greater tendency to generalisation of tuberculosis in the pig, we consider that the presence of tubercular deposit in any degree should involve seizure of the whole carcase and of the organs.

" In respect of foreign dead meat, seizure shall ensue in every case where the pleura have been 'stripped.' "

The Board do not consider it necessary, at present, that anything should be added to these Instructions, or that they should be modified, and the Board think that the council should direct those of their officers who are employed as meat inspectors to act in ccordance with the principles thus laid down.

The Board may at the same time draw attention to Article 19 (7) of their General Order of the 23rd March, 1891(*f*), with respect to the duties of an inspector of nuisances in relation to the inspection and seizure of meat. They may point out that where an inspector of nuisances is appointed under that Order, or under any Order superseded by that Order, he is required by the Article, in any case of doubt arising under it, to report the matter to the medical officer of health with the view of obtaining his advice thereon. The Board think it desirable that any such inspector of nuisances should be reminded of this provision.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary.*

The Town Clerk or *The Clerk to the Urban District Council.*

(*f*) See now the Order of 13th December, 1910, *post*, p. 2474.

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TUBERCULOSIS.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
6th September, 1901.

SIR,—I am directed by the Local Government Board to state that at the recent Congress on tuberculosis Professor Koch called in question the correctness of the opinion that tuberculosis can be transmitted from animals to man. The views expressed by Professor Koch on this subject have not received the general assent of scientific men; but, having regard to the great importance of the matter, His Majesty's Government have thought it right to accede to a request made by the Congress that there should be an inquiry with respect to it. A Royal Commission has accordingly been appointed to inquire and report whether tuberculosis in animals and man is one and the same disease; whether animals and man can be reciprocally infected with it; under what conditions, if at all, the transmission of the disease from animals to man takes place; and what are the circumstances favourable or unfavourable to such transmission.

The Board are desirous, however, of impressing upon the local authorities concerned that pending the investigations and report of the Royal Commission there should be no relaxation on their part or on that of their officers in the taking of proper measures for dealing with milk from tuberculous cows and with tuberculous meat which may be intended for the food of man. It is, in the opinion of the Board, of much importance that these measures should continue to be taken, and they rely on this being done.

At the same time the Board may observe that representations have been made to them to the effect that the action of the officers of local authorities in the seizing of tuberculous meat is not uniform. The Royal Commission on tuberculosis, in the report which they made in 1898, referred to the degree of tubercular disease which should cause a carcase, or part thereof, to be seized. They stated as follows:—

"We are of opinion that the following principles should be observed in the inspection of tuberculous carcases of cattle:—

(a) When there is miliary tuberculosis of both lungs. (b) When tuberculous lesions are present on the pleura and peritoneum. (c) When tuberculous lesions are present in the muscular system, or in the lymphatic glands embedded in or between the muscles. (d) When tuberculous lesions exist in any part of an emaciated carcase.	The entire carcase and all the organs may be seized.
(a) When the lesions are confined to the lungs and the thoracic lymphatic glands. (b) When the lesions are confined to the liver. (c) When the lesions are confined to the pharyngeal lymphatic glands. (d) When the lesions are confined to any combination of the foregoing, but are collectively small in extent.	The carcase, if otherwise healthy, shall not be condemned, but every part of it containing tuberculous lesions shall be seized.

"In view of the great tendency to generalisation of tuberculosis in the pig, we consider that the presence of tubercular deposit in any degree should involve seizure of the whole carcase and of the organs.

"In respect of foreign dead meat, seizure shall ensue in every case where the pleura have been 'stripped.'"

The Board drew attention to this matter in the circular letters which they addressed to the councils of boroughs and urban and rural districts on the 11th March, 1899, and they desire again to refer to it and strongly to urge upon the council to direct those of their officers who are employed as meat inspectors to act in accordance with the principles laid down by the Royal Commission.

It is also of much importance that a person who is to act as a meat inspector

should possess proper qualifications for the office. He should, as was pointed out by the Royal Commission, be acquainted with—

(a) The law of meat inspection.

(b) The names and situations of the organs of the body.

(c) Signs of health and disease in animals destined for food, both when alive and after slaughter.

(d) The appearance and character of fresh meat, organs, fat, and blood, and the conditions rendering them, or preparations from them, fit or unfit for human food.

The Board trust that in making appointments of officers on whom will devolve the duty of acting as meat inspectors, the council will satisfy themselves that the person appointed possesses adequate knowledge on these subjects.

The Board may at the same time draw attention to Article 19 (7) of their general Order of the 23rd March, 1891, with respect to the duties of an inspector of nuisances in relation to the inspection and seizure of meat. There is a similar provision in Article 19 (6) of the Order in force in London, viz., the Sanitary Officers (London) Order, 1891.

Any inspector of nuisances or sanitary inspector to whom either of these Orders applies is required in any case of doubt in connection with the inspection and seizure of meat to report the matter to the medical officer of health, with the view of obtaining his advice thereon. The Board think it desirable that any such inspector of nuisances or sanitary inspector should be reminded of his duty in this respect.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary*.

The Town Clerk, or
The Clerk to the Urban or
Rural District Council.

SEIZURE AND CONDEMNATION OF TUBERCULOUS MEAT.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
7th September, 1904.

SIR,—I am directed by the Local Government Board to state that they have had under consideration the report of the Select Committee of the House of Commons on the Tuberculosis (Animals) Compensation Bill, 1904, in which reference is made (a) to the variety of practice alleged to exist with regard to the amount of tubercular deposit, the existence of which in a carcase is held to justify its total condemnation; and (b) to complaints made by butchers as to the injury caused to them by their prosecution in open court for having tuberculous meat upon their premises.

With regard to (a) it appears to the Board to be most desirable that there should be uniformity in the practice of meat inspectors in dealing with the carcases of cattle; and they have already on two occasions, viz., in their circular letters of the 11th March, 1899, and 6th September, 1901, set out, and urged the observance of, the principles laid down by the Royal Commission on Tuberculosis in their report of 1898 with respect to the degree of tubercular disease which should cause a carcase or part thereof to be seized. The Royal Commission stated as follows:—

"We are of opinion that the following principles should be observed in the inspection of tuberculous carcases of cattle:—

(a) When there is miliary tuberculosis of both lungs. (b) When tuberculous lesions are present on the pleura and peritoneum. (c) When tuberculous lesions are present in the muscular system, or in the lymphatic glands embedded in or between the muscles. (d) When tuberculous lesions exist in any part of an emaciated carcase.	The entire carcase and all the organs may be seized.

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(a) When the lesions are confined to the lungs and the thoracic lymphatic glands. (b) When the lesions are confined to the liver. (c) When the lesions are confined to the pharyngeal lymphatic glands. (d) When the lesions are confined to any combination of the foregoing, but are collectively small in extent.	The carcase, if otherwise healthy, shall not be condemned, but every part of it containing tuberculous lesions shall be seized."

The Board are of opinion that, at the present time, measures more stringent than those advocated by the Royal Commission are not called for; but they would impress upon the council the expediency and desirability of insisting upon those of their officers who are employed as meat inspectors acting in strict accordance with the principles thus laid down, if this is not already the case.

With regard to (b) the Select Committee express their view that, if a butcher who is in possession of tuberculous meat has notified the fact to the proper authority as soon as he could be reasonably expected to be aware of it, the case should not be taken into court.

The Board understand that in some districts the course recommended by the committee is followed now, but where this is not so the Board suggest that, having regard to the serious consequences which may result to a butcher from prosecution in open court for being in possession of tuberculous meat, the council should act upon the view expressed by the Select Committee in cases where such possession is voluntarily and promptly disclosed by the owner.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary.*

The Town Clerk, or
The Clerk to the Urban District Council, or
Rural District Council.

(9160.)

ORDER OF THE BOARD OF AGRICULTURE AND FISHERIES.

(Dated 23rd June, 1914.)

TUBERCULOSIS ORDER OF 1914.

The Board of Agriculture and Fisheries, by virtue and in exercise of the powers vested in them under the Diseases of Animals Acts, 1894 to 1911, and of every other power enabling them in this behalf, do order, and it is hereby ordered, as follows:—

Interpretation.

1. In this Order—
"The Board" means the Board of Agriculture and Fisheries:
"Local authority" means a local authority for the purposes of the Act of 1894:
"The Act of 1894" means the Diseases of Animals Act, 1894:
"Inspector" includes veterinary inspector:
"Bovine animal" means a bull, cow, ox, heifer or calf:
"Cow" includes a heifer that has calved:
"Milk" includes cream and separated or skimmed milk.
"Tuberculous emaciation" means emaciation due to tuberculosis.

Other terms have, where the context so permits, the same meaning and scope as in the Act of 1894.

Notice of disease.

2.—(1) Every person having in his possession or under his charge
(i.) any cow which is, or appears to be, suffering from tuberculosis of the udder, indurated udder or other chronic disease of the udder; or
(ii.) any bovine animal which is, or appears to be, suffering from tuberculous emaciation; or
(iii.) any bovine animal which is suffering from a chronic cough and showing definite clinical signs of tuberculosis

shall without avoidable delay give information of the fact to a constable of the police force for the area wherein the animal is, or to an inspector of the local authority, and the constable or inspector shall transmit the information to the local authority. **Appendix II.**

(2) The person in possession or having charge of the animal shall forthwith take such steps as are necessary to secure compliance with Article 9 (*Precautions to be adopted with respect to Milk, etc.*) and Article 10 (*Detention and Isolation of Suspected Animals*).

Notification of disease by veterinary surgeons.

3.—(1) A vetereinary surgeon or veterinary practitioner who in his private practice is employed to examine any bovine animal, and is of opinion that the animal is suffeiing from tuberculosis of the udder or tuberculous emaciation, or suffering from a chronic cough and showing definite clinical signs of tuberculosis, shall with all practicable speed give notice of the existence or suspected existence of such disease to an inspector of the local authority.

(2) A veterinary surgeon or veterinary practitioner who under and in accordance with this Article gives notice of the existence or suspected existence of disease to an inspector of the local authority shall be entitled to receive from the local authority a fee of two shillings and sixpence for each notification.

(3) Where two or more animals are examined by a veterinary surgeon or veterinary practitioner on the same premises and at the same time and are found to be diseased, one fee only shall be payable to him under this article in respect of the notification of the existence or suspected existence of disease in such animals.

Examination of animals, &c.

4.—(1) The local authority shall in every case where, by reason of information received under the preceding articles or otherwise, there is reasonable ground for supposing that on any premises in their district there is a cow which is suffering from chronic disease of the udder or giving tuberculous milk, or a bovine animal which is suffering from tuberculous emaciation or suffering from a chronic cough and showing definite clinical signs of tuberculosis, direct a veterinary inspector with all practicable speed to examine the diseased or suspected animal and any other bovine animals on such premises which the veterinary inspector considers it is desirable to examine to ascertain whether any cow on the premises is suffering from tuberculosis of the udder or giving tuberculous milk, or whether any bovine animal thereon is suffering from tuberculous emaciation or suffering from a chronic cough and showing definite clinical signs of tuberculosis, and the inspector may, with the previous consent in writing of the owner of the animal or of his agent, but not otherwise, apply the tuberculin test to any cow which the inspector suspects of suffeiing from tuberculosis of the udder, or of giving tuberculous milk, or to any bovine animal which the inspector suspects of suffering from tuberculous emaciation.

(2) The veterinary inspector may at all reasonable hours enter on any part of the premises and examine any bovine animal thereon, and the veterinary inspector may require any cow on the premises to be milked in his presence, and may take samples of the milk, and the milk from any particular teat shall if he so require be kept separate, and separate samples thereof shall be furnished.

(3) The inspector may also take samples of the fæces or urine of any bovine animal on the premises, or of any abnormal discharge from any bovine animal thereon.

(4) The occupier of the premises and the persons in his employment shall render such reasonable assistance to the inspector as may be required for all or any of the purposes of this article, and any person refusing such assistance shall be deemed guilty of an offence against the Act of 1894.

(5) The veterinary inspector shall as soon as possible send to the local authority a report showing the result of his examination and investigation. The local authority, if not themselves the sanitary authority, shall cause a copy of the report to be sent to that authority if the report shows that any animal is suffering from tuberculosis of the udder or tuberculous emaciation, or giving tuberculous milk, or suffering from a chronic cough and showing definite clinical signs of tuberculosis.

(6) If the report of the inspector as to any animal does not show that it is suffering from tuberculosis of the udder or tuberculous emaciation, or giving tuberculous milk, or suffering from a chronic cough and showing definite

Appendix II. signs of tuberculosis, notice in writing shall forthwith be given by the local authority or an inspector of the local authority, to the owner or person in charge thereof that the provisions of this Order relating to precautions to be adopted with respect to milk and detention and isolation of suspected animals have ceased to apply to the animal. A notice to the like effect may be given at any time by an inspector or other officer of the board acting under their directions.

Slaughter of diseased animals.

5.—(1) Where the report of the inspector under the preceding article shows that there is an animal which is suffering from tuberculosis of the udder or tuberculous emaciation, or giving tuberculous milk, or suffering from a chronic cough and showing definite clinical signs of tuberculosis, the local authority shall with all practicable speed cause notice in writing (in the form set forth in the schedule hereto or to the like effect) to be given to the owner or person in charge of the animal and also to the board, and cause the animal to be slaughtered; provided that if, before the slaughter is carried out, the owner of the animal, or any person on his behalf, gives notice in writing to the local authority, or to their inspector or other officer directed to carry out such slaughter, that the owner objects to the animal being slaughtered under the provisions of this Order, it shall not be lawful for the local authority to cause the animal to be slaughtered without the special authority of the Board first obtained.

(2) If the value of an animal proposed to be slaughtered, as agreed or certified under this Order, exceeds thirty pounds, the local authority shall not proceed with its slaughter unless so directed by the Board.

Valuation for compensation

6. The market value of the animal shall before slaughter be determined for the purposes of this Order by agreement between the local authority and the owner of the animal, or if they fail so to agree, by a valuer appointed by the local authority and the owner or on the application of the local authority appointed by the Board, but in either case paid by the local authority, and such valuer shall give to the local authority and to the owner a certificate in writing of the said value.

Post-mortem examination of slaughtered animals.

7.—(1) In the case of every animal slaughtered by a local authority under this Order, the local authority shall cause the carcase, at the time of slaughter or as soon as practicable thereafter, to be examined by a veterinary inspector of the local authority, or (if so required by the owner or person in charge of the animal before it is slaughtered) by some other veterinary surgeon, who, failing agreement between the local authority and such owner or person, shall be nominated by the Board but paid by the local authority.

(2) The veterinary inspector or other veterinary surgeon shall at the conclusion of his examination give to the local authority and to the owner or person in charge of the animal a certificate of the result of the examination in the Form set forth in the Schedule hereto or to the like effect.

Compensation.

8.—(1) If the local authority fail to carry out the examination required by the preceding article, or if the certificate of such examination does not show that the animal was suffering from tuberculosis, the local authority shall, by way of compensation, pay to the owner thereof a sum equal to the market value of the animal, and a further sum of twenty shillings.

(2) If the certificate of the examination shows that the animal was suffering from tuberculosis (not being advanced tuberculosis), the local authority shall, by way of compensation, pay to the owner a sum equal to three-fourths of the market value of the animal, or the sum of thirty shillings, whichever sum is the greater, after deducting from such sum one-half of their reasonable costs of any valuation of the animal by a valuer appointed by the Board, and of any examination of its carcase by a veterinary surgeon other than the veterinary inspector.

(3) If the certificate of the examination shows that the animal was suffering from advanced tuberculosis, the local authority shall, by way of compensation, pay to the owner a sum equal to one-fourth of the market value of the animal, or the sum of thirty shillings, whichever sum is the greater, after deducting from such sum one-half of their costs of valuation and examination as in the preceding case.

Appendix II.

(4) For the purposes of this Order an animal slaughtered under this Order shall be deemed to have been suffering from advanced tuberculosis

(a) When there is miliary tuberculosis of both lungs ;

(b) when tuberculous lesions are present on the pleura and peritoneum ;

(c) when tuberculous lesions are present in the muscular system, or in the lymphatic glands embedded in or between the muscles.

(5) If in any case the sum received by the local authority on sale of a carcase of an animal slaughtered under this Order exceeds the amount paid for compensation to the owner of the animal, the local authority shall pay that excess to the owner, after deducting reasonable expenses.

Precautions to be adopted with respect to milk, &c.

9.—(1) The milk produced by any cow which is, or appears to be, suffering from chronic disease of the udder or tuberculous emaciation or is suffering from a chronic cough and showing definite clinical signs of tuberculosis, shall not be mixed with other milk until the cow has been examined by a veterinary inspector in accordance with the provisions of this Order, and until either three clear days after the examination have expired or the owner or person in charge thereof has been notified that this article has ceased to apply to the cow ; and all milk affected by this Article shall forthwith be boiled or otherwise sterilised, and any utensil in which such milk is placed before being so treated shall be thoroughly cleansed with boiling water before any other milk is placed therein. These provisions shall also apply to the milk of a cow in relation to which a notice of intended slaughter has been served from the date of the service of the notice until the slaughter of the animal.

(2) A local authority, or a veterinary inspector on their behalf, may by written notice apply the provisions of this Article to the milk produced by any cow specified in the notice which is suspected of giving tuberculous milk and is examined under this Order, and such provisions shall apply accordingly.

Detention and isolation of suspected animals.

10.—(1) Every person having in his possession or under his charge any cow which is, or appears to be, suffering from chronic disease of the udder, or any bovine animal which is, or appears to be suffering from tuberculous emaciation, or is suffering from a chronic cough and showing definite clinical signs of tuberculosis, shall keep the animal isolated as far as practicable from other bovine animals, and also keep the animal in his possession or under his charge, until the animal has been examined by a veterinary inspector in accordance with the provisions of this Order and the owner or person in charge thereof has been notified that this Article has ceased to apply to the animal.

(2) A local authority, or a veterinary inspector on their behalf, may by written notice apply this Article to any bovine animal specified in the notice examined under this Order, and such Article shall apply accordingly.

Suspected animals in markets, fairs, and sales.

11.—(1) In the case of

(i.) any cow which is, or is suspected by a veterinary inspector to be, suffering from tuberculosis of the udder ; or

(ii.) any bovine animal which is, or is suspected by a veterinary inspector to be, suffering from tuberculous emaciation, or which in his opinion is suffering from a chronic cough and showing definite clinical signs of tuberculosis,

and which is exposed in a market, fairground, or saleyard, the veterinary inspector may, by notice served on the owner or person in charge of the animal, require it to be removed from the market, fairground, or saleyard to the premises from which it was brought thereto, or at the option of the owner or person in charge to a slaughterhouse or other suitable premises specified in the notice, and thereupon the animal shall forthwith be moved by the owner or person in charge to those premises for the purpose of examination under the foregoing provisions of this Order or slaughter in the slaughterhouse.

(2) Where the premises to which the animal is required under this article to be moved are not in the same district as the market, fairground, or saleyard, the inspector serving the notice shall forthwith send a copy of the notice to the local authority of the district in which the first-mentioned premises are situate.

Cleansing and disinfection.

12. The occupier of any premises on which there has been a cow suffering from tuberculosis of the udder or giving tuberculous milk, or a bovine animal suffering from tuberculous emaciation, or suffering from a chronic cough and

Appendix II. showing definite clinical signs of tuberculosis, shall if so required in writing by an inspector of the local authority cleanse and disinfect at his own expense, and to the satisfaction of the inspector, that part of any shed or other erection in which the animal has recently been placed or kept.

Reports to the Board.

13. Every local authority and their inspectors and officers shall send and give to the Board such reports, returns, and information as to their proceedings under this Order as the Board require.

Extension of certain sections of Diseases of Animals Act, 1894.

14. Tuberculosis shall be a disease for the purposes of the following sections of the Act of 1894 (namely):

Sections nineteen and twenty (*Slaughter in Disease and Compensation Generally*):

Section forty-three (*Police*);

Section forty-four (*General Administrative Provisions*);

and also for the purposes of all other sections of the said Act containing provisions relative to or consequent on the provisions of those sections and this Order, including such sections as relate to offences and legal proceedings.

Information to be given as to certain animals or animals in contact therewith.

15. Article 36 of the Animals (Transit and General) Order of 1912 (*Information to be given as to Diseased or Suspected Animals or Animals in contact therewith*) shall apply to

(i.) any cow which is, or is suspected of, suffering from tuberculosis of the udder or giving tuberculous milk; and

(ii.) any bovine animal which is, or is suspected of, suffering from tuberculous emaciation, or which is suffering from a chronic cough and showing definite clinical signs of tuberculosis.

Offences.

16. Every person who—

(i.) fails to give the notice required by Article 2 or Article 3 of this Order; or

(ii.) fails to comply with any provision of this Order relating to precautions to be adopted with respect to milk or relating to detention and isolation of animals; or

(iii.) fails to comply with any notice directing removal of an animal from a market, fairground or saleyard; or

(iv.) fails to cleanse or disinfect any erection which under this Order he is required to cleanse or disinfect

shall, according to and in respect of his own acts and defaults, be deemed guilty of an offence against the Act of 1894.

Extent.

17. This Order extends to England and Wales and Scotland.

Local authority to enforce Order.

18. The provisions of this Order, except where it is otherwise provided, shall be executed and enforced by the local authority.

Revocation.

19. The Tuberculosis Order of 1913 is hereby revoked; Provided that notices under that Order shall have effect as notices under this Order, and that in the case of an animal slaughtered before the commencement of this Order the compensation shall be ascertained under the revoked Order.

Commencement.

20. This Order shall come into operation on the first day of July, nineteen hundred and fourteen.

Short title.

21. This Order may be cited as the Tuberculosis Order of 1914.

In witness whereof the Board of Agriculture and Fisheries have hereunto set their Official Seal this twenty-third day of June, nineteen hundred and fourteen.

(L.S.) A. W. ANSTRUTHER, *Assistant Secretary.*

SCHEDULE.

FORMS.

TUBERCULOSIS ORDER OF 1914.

Form of Notice of Intended Slaughter.

(Article 5.)

To of

The local authority for the county [borough *or* burgh] of hereby give notice that the [*insert description of animal*] which is now kept at [*insert description of premises where it is kept, stating parish*] is

*(a) suffering from tuberculosis of the udder;

*(b) giving tuberculous milk;

*(c) suffering from tuberculous emaciation;
*(d) suffering from a chronic cough and showing definite clinical signs of tuberculosis,

and that they propose with all convenient speed to slaughter the animal.

* *Strike out the part which is inapplicable.*

(Signed)
By direction of the local authority.

Dated 191 .

NOTE.—If the owner of the animal, or any person on his behalf, before the slaughter is carried out, gives notice in writing to the local authority, or to their inspector or other officer directed to carry out the slaughter, that the owner objects to the animal being slaughtered, it may not be slaughtered without the special authority of the Board first obtained.

The compensation payable by the local authority is regulated by the Order.

A duplicate of this notice must forthwith be sent by the person serving it to the Board of Agriculture and Fisheries.

TUBERCULOSIS ORDER OF 1914.

Form of Certificate of Result of Post-mortem Examination.

(Article 7.)

I, *A. B.*, a veterinary inspector of the local authority for the county [borough *or* burgh] of [*or* a veterinary surgeon acting under the Tuberculosis Order of 1914] do hereby certify that my examination of the carcase of [*here describe the animal slaughtered*] which was caused to be slaughtered by the local authority for the county [borough *or* burgh] of on the day of 191 , and which animal belonged to , of , does not show that the animal was affected with tuberculosis [*or* shows that the animal was affected with tuberculosis (not being advanced tuberculosis within the meaning of the Tuberculosis Order of 1914)] [*or* shows that the animal was suffering from advanced tuberculosis within the meaning of the Tuberculosis Order of 1914].

(Signed) *A. B.*

Dated 191 .

N.B.—This certificate must be given to the local authority, and a duplicate thereof to the owner or person in charge of the animal.

Copies of the above order can be obtained on application to the Secretary, Board of Agriculture and Fisheries, 4, Whitehall Place, London, S.W.

DEATHS AND PAUPER SICKNESS.

RETURNS OF DEATHS FROM REGISTRARS; RETURNS OF PAUPER SICKNESS FROM DISTRICT MEDICAL OFFICERS.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
18*th August*, 1879.

SIR,—I am directed by the Local Government Board to transmit to you the accompanying copies of a memorandum, which the Board have recently caused to be prepared, on the arrangements which should be made for supplying medical officers of health with information as to all registered deaths and as to sickness among paupers; and I am to request that the guardians, both in their Poor Law capacity and as the rural sanitary authority, will, if they have not already done so, take such steps in this matter as may be requisite.

I am, etc.,
JOHN LAMBERT, *Secretary*.

The Clerk to the Guardians.

No. 29.

MEMORANDUM.

Returns of Deaths from Registrars.

Returns of Pauper Sickness from District Medical Officers.

Under Articles 14 and 15 of section IV. of the General Order of the 11th November, 1872, every medical officer of health whose appointment has been approved by the Board is required to prepare an annual report comprising, amongst other things, tabular statements of the mortality and of the pauper sickness in his district. Information as to mortality and sickness is required by the medical officer of health not only in preparing these statements, but also in discharging the duties of his office, and this memorandum is intended

Appendix II. to indicate the arrangements which should be made for furnishing him with such information.

1. The sanitary authority should under section 28 of the Births and Deaths Registration Act, 1874, require the registrars of births and deaths to supply returns of the deaths registered within their respective districts. These returns should be made weekly as regards all deaths registered as having occurred within the registrar's district during the preceding week; but an immediate notice should be given of all deaths from infectious disease in fresh localities, and of all groups of deaths from such disease, or from diarrhœa, in any localities. The Registrar-General has prepared for the use of registrars a form in which the weekly returns may be conveniently made. A fee of twopence for each entry is payable by the sanitary authority.

2. The medical officer of health should be regularly supplied with information of the new cases of pauper sickness in his district. This information is valuable to him, not only as an index to the prevalence of non-fatal disease among all classes in the sanitary district, but as giving him occasion to exercise useful and immediate sanitary supervision over localities which are most apt to require such supervision. It is requisite for this object, as well as to enable him to complete the annual returns, that (except where the medical officer of health is himself the poor law medical officer for the whole sanitary area under his superintendence, in which case he will of course possess this information) the guardians should instruct their clerk to copy from the district medical officers' relief lists the new cases which are reported at each meeting of the guardians, and to forward the same promptly and regularly to the medical officer or officers of health within the union. Arrangements should be made for the regular transmission of the copies referred to as early as practicable after each meeting. It is competent to the sanitary authority, whether rural or urban, to pay a reasonable sum to the clerk to the guardians for the supply of this information.

3. The guardians should request the poor law medical officers to give to the medical officer of health (or to the inspector of nuisances, for the information of the medical officer of health) acting within their respective districts, the earliest possible information of cases of dangerous infectious disease under their charge; as it is evident that unless such information is given as soon as the cases occur, the action of the sanitary authority in regard to the prevention of infection may often fail in its effect.

4. Under the Board's General Order of the 12th February, 1879, it is incumbent upon all district and workhouse medical officers appointed since the 28th February, 1879, to furnish the medical officer of health with returns of pauper sickness and deaths, as well as to notify the outbreak of dangerous infectious disease. A similar obligation has been imposed by the Board's Order of the 14th June, 1879, upon medical officers of district schools appointed after the 24th June, 1879.

JOHN LAMBERT, *Secretary.*

Local Government Board,
July 20th, 1879.

DEVELOPMENT FUND AND ROAD BOARD.

In connection with this subject the following may be referred to: Circular of Road Board (July, 1910) as to applications for advances; Treasury Regulations—Constitution of Road Board (May 13th, 1910); Road Improvement Fund (June 2nd, 1910); Development Fund (June 13th, 1910); Road Board Specifications for Tar Treatment of Roads (April, 1911); Circular of Road Board as to Contributions towards Road Crust Improvements (December 8th, 1911).

DISEASES AND HOSPITALS.

See also "CHOLERA, etc.," and "DAIRIES, etc.," *ante*, and "OFFICERS AND TUBERCULOSIS," *post*.

Reference may also be made to the following official publications: The periodical list of official publications on Public Health; the explanatory Circulars issued with the various Orders, etc., printed below; a General

Memorandum (November, 1909) on the proceedings which are advisable in places attacked or threatened by epidemic disease; a Circular (September 25th, 1902) or a Memorandum (March, 1901) as to small-pox; a Circular (August 17th, 1905) as to small-pox amongst navvies; a Memorandum (1909) as to closure of, and exclusion of children from, schools; Circulars and Memoranda of various dates as to measles, poliomyelitis and cerebro-spinal fever, infantile epidemic diarrhœa, the Notification of Births Act, 1907, the distribution of disinfectants, outbreaks of food poisoning, foot and mouth disease, etc.

Appendix II.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889—FORM OF CERTIFICATE UNDER SECTION 4 (1)—GENERAL ORDER.

(September 12th, 1889.)

TO THE COMMISSIONERS OF SEWERS IN THE CITY OF LONDON; To the Vestries and District Boards for the time being acting under the Metropolis Management Act, 1855, or any Act amending the same; To the Woolwich Local Board of Health; To the several other Local Authorities in England to whose Districts the Infectious Disease (Notification) Act, 1889, shall from time to time extend; And to all others whom it may concern.

WHEREAS [*recites sections* 3 (1), 4 (1) *of the Infectious Disease* (*Notification*) *Act*, 1889 (ante, *p.* 796)].

NOW THEREFORE, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our Order, prescribe and order as follows:—

The Form of Certificate contained in the Schedule hereto shall, until we otherwise prescribe, be the form for the purpose of any certificate to be given under sub-section (1) (b) of section 3 of the Infectious Disease (Notification) Act, 1889.

SCHEDULE.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

CERTIFICATE OF MEDICAL PRACTITIONER.

(1)

To the Medical Officer of Health.

I hereby certify and declare, that in my opinion (2) an inmate of (3) is suffering from (4) .

Dated the day of , 18 .

(Signed) *Medical Practitioner.*

N.B.—The certificate must (under a penalty not exceeding forty shillings) be sent to the medical officer of health forthwith on the medical practitioner attending on or called in to visit the patient becoming aware that the patient is suffering from an infectious disease to which this Act applies; namely, any of the following diseases: Small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names: typhus, typhoid, enteric, relapsing, continued or puerperal, and also any infectious disease to which the Act has been applied by the local authority in manner provided by the Act.

(1) Insert the name of the district of the local authority.

(2) Name in full of person suffering from disease.

(3) Number or name of the house, and name of the street or road, and parish or place, where person is resident. In the case of a ship, boat, tent, van, shed, or other similar structure, the name or description of the dwelling, and the name of the place where it is situate should be given.

(4) Name of disease.

Given under the Seal of Office of the Local Government Board, this twelfth day of September, in the year one thousand eight hundred and eighty-nine.

(L.S.) CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

Appendix II.

NOTIFICATION AND TREATMENT OF CEREBRO-SPINAL FEVER AND ACUTE POLIOMYELITIS—GENERAL ORDER.

(August 15th, 1912.)

TO THE COUNCILS of the several Municipal Boroughs and other Urban Districts in England and Wales; To the Councils of the several Rural Districts in England and Wales; To all Medical Practitioners; And to all others whom it may concern.

WHEREAS [*recites section* 130 *of the P. H. A.*, 1875, *as amended by the P. H. A.*, 1896.]

NOW THEREFORE, we, by this our Order, and in the exercise of the powers conferred upon us by the Public Health Act, 1875, and the Public Health Act, 1896, and of every other power enabling us in that behalf, do make the following regulations, that is to say:—

ARTICLE I.—In these regulations—

The expression "local authority" means the council of a municipal borough or other urban district or the council of a rural district; and

The expression "medical practitioner" means duly qualified medical practitioner.

ARTICLE II.—These regulations shall come into operation on the first day of September, one thousand nine hundred and twelve, and, subject as provided in Article V. hereof, shall then and thereafter apply and have effect throughout England and Wales, and shall be enforced and executed by every local authority.

ARTICLE III.—Subject as provided in these regulations the persons mentioned in section 3 of the Infectious Disease (Notification) Act, 1889 (hereinafter referred to as "the Act of 1889") and the local authority shall, under these regulations, have the same powers and duties in relation to cases of cerebro-spinal fever and of acute poliomyelitis as they have under that Act and under the Infectious Disease (Prevention) Act, 1890, and under the Public Health Acts in the case of infectious diseases to which the Act of 1889 applies.

ARTICLE IV.—Every medical practitioner who sends to the medical officer of health a certificate of a case of cerebro-spinal fever or acute poliomyelitis under the Act of 1889 or under these regulations shall at the same time state on the certificate the age and sex of the patient and the date of the onset of the disease.

ARTICLE V.—(1) In any district in which the Act of 1889 applies to cerebro-spinal fever and acute poliomyelitis by virtue of an Order made by the local authority and approved by us thereunder these regulations shall not come into operation, except to the extent of the regulations prescribed by Articles IV. and VI. hereof, until such Order as aforesaid shall expire or shall have been revoked.

(2) Nothing in these regulations shall apply or have effect in relation to any district in which cases of cerebro-spinal fever and acute poliomyelitis are for the time being required to be notified to the medical officer of health in pursuance of the provisions of a local Act or of an order made thereunder.

(3) Nothing in these regulations shall require a medical practitioner to notify any case of cerebro-spinal fever or acute poliomyelitis which has already, to his knowledge, been notified under these regulations or under the Act of 1889.

ARTICLE VI.—The local authority shall forthwith cause notice to be given to every medical practitioner practising within the district of the local authority of the duties imposed upon him by these regulations.

ARTICLE VII.—These regulations may be cited as "The Public Health (Cerebro-Spinal Fever and Acute Poliomyelitis) Regulations, 1912."

Given under the Seal of Office of the Local Government Board, this fifteenth day of August, in the year one thousand nine hundred and twelve.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

ASSIGNMENT OF CERTAIN POWERS UNDER THE INFECTIOUS DISEASE (PREVENTION) ACT, 1890—GENERAL ORDER.

(August 20th, 1912.)

TO ALL PORT SANITARY AUTHORITIES other than the PORT SANITARY AUTHORITY of the PORT OF LONDON; And to all others whom it may concern.

WHEREAS [*recites section* 1 *of the P. H.* (*Ports*) *Act*, 1896].

And whereas by divers Orders issued by us, section 120 of the Public Health Act, 1875, has been put in force in the several port sanitary districts in England and Wales (other than the district of the port sanitary authority of the port of London), or some of them;

And whereas [*recites section* 5 *of the Infectious Disease* (*Prevention*) *Act*, 1890 (*herein-after referred to as* "*the Act*")].

And whereas it is expedient that the provisions of section 5 of the Act with certain necessary modifications should be assigned to the several port sanitary authorities other than the port sanitary authority of the port of London in substitution for the provisions of section 120 of the Public Health Act, 1875:

NOW THEREFORE, we, the Local Government Board, in pursuance of the powers given to us by the statutes in that behalf, do hereby order as follows:—

ARTICLE I.—This Order shall come into operation on the first day of September, one thousand nine hundred and twelve.

ARTICLE II.—Subject as herein-after mentioned, we do hereby assign to every port sanitary authority other than the port sanitary authority of the port of London, all powers, rights, duties, capacities, and obligations under the provisions of section 5 of the Act, in relation to any infectious disease to which the Public Health Act, 1875, applies, and under sections 16, 17, 18, and 20 of the Act so far as those sections relate to the exercise of the powers, rights, duties, capacities, and obligations under the provisions of section 5 of the Act as hereby assigned.

ARTICLE III.—For the purposes of the assignment of the said powers, rights, duties, capacities, and obligations under sections 5, 16, 17, 18 and 20 of the Act to every port sanitary authority other than the port sanitary authority of the port of London as aforesaid, the said sections shall be modified so as to read as follows:—

"5. Section one hundred and twenty of the Public Health Act, 1875, so far as it applies to any port sanitary district, shall be no longer in force, and the following provisions shall be in force in lieu thereof; that is to say:—

"(1) Where the medical officer of health of any port sanitary authority certifies that the cleansing and disinfecting of—

"(a) any berth, cabin, or other place which is or has been occupied, or is or has been provided or appropriated for occupation, by any person while on board any ship, or

"(b) any articles on board any ship which are likely to retain infection,

would tend to prevent or check infectious disease, the clerk to the port sanitary authority shall give notice in writing to the master of such ship, that such berth, cabin, or other place or that such articles will be cleansed and disinfected by the port sanitary authority at the cost of the master of such ship, unless such master informs the port sanitary authority within six hours from the receipt of the notice that he will forthwith cleanse and disinfect such berth cabin or other place or such articles to the satisfaction of the medical officer of health.

"(2) If within six hours from the receipt of the notice the master does not inform the port sanitary authority as aforesaid, or if, having so informed the port sanitary authority, he fails to have such berth cabin or other place or such articles disinfected as aforesaid, the berth cabin or other place or such articles shall be cleansed and disinfected by the officers of the port sanitary authority under the superintendence of the

Appendix II.

medical officer of health, and the expenses incurred may be recovered from the master in a summary manner.

"(3) Provided that where the master of any such ship is unable, in the opinion of the port sanitary authority or of their medical officer of health, effectually to cleanse and disinfect any such berth cabin or other place or such articles, the same may without any such notice being given as aforesaid, but with the consent of such master, be cleansed and disinfected by the officers of and at the cost of the port sanitary authority, and such cleansing and disinfection shall be completed with all reasonable despatch by such officers."

"16. Every person who shall wilfully obstruct any duly authorised officer of the port sanitary authority in carrying out the provisions of sections 5 and 17 of this Act shall be liable to a penalty not exceeding five pounds, and if the offence is a continuing one, to a daily penalty not exceeding forty shillings a day so long as the offence continues."

"17. For the purpose of carrying into effect the provisions of section 5 of this Act the port sanitary authority may, by any officer appointed in that behalf, who shall produce his authority in writing, enter at any time on any ship."

"18. Every penalty imposed by section 16 of this Act shall be recoverable in a court of summary jurisdiction on the information or complaint of the port sanitary authority, or of their duly authorised officer, but not otherwise, and shall be paid to the port sanitary authority."

"20. Any expenses incurred by a port sanitary authority in the execution of any of the provisions of sections 5, 17 or 18 of this Act shall be paid as part of the expenses of that authority in the execution of the Acts relating to public health."

ARTICLE IV.—In the provisions of the Act applied as modified by this Order to port sanitary authorities other than the port sanitary authority for the port of London, the expression "medical officer of health" shall include any person duly authorised to act temporarily as medical officer of health.

ARTICLE V.—This Order may be cited as "The Port Sanitary Authorities (Assignment of Powers) Order, 1912."

Given under the Seal of Office of the Local Government Board, this twentieth day of August, in the year one thousand nine hundred and twelve.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

PROVISION, ETC., OF DIPHTHERIA ANTI-TOXIN—ORDER.

(15th August, 1910.)

TO THE COUNCIL of every County Borough; TO THE COUNCIL of every Urban District; TO THE COUNCIL of every Rural District; To every Medical Officer of Health of any of the Councils aforesaid; And to all others whom it may concern.

WHEREAS [*recites section* 133 *of the P. H. A.*, 1875].

And whereas it is expedient that, subject as hereinafter stated, the sanction of the Local Government Board should be given under the above-cited enactment to the provision by any of the said councils of a temporary supply of the medicine known and hereinafter referred to as "diphtheria anti-toxin," and of medical assistance in connection with the temporary supply of diphtheria anti-toxin;

And whereas in pursuance of the enactments in that behalf, the Local Government Board by a General Order dated the 23rd day of March, 1891, prescribed in relation to medical officers of health appointed by the councils of county boroughs and by the councils of urban districts, and by another General Order of the same date prescribed in relation to medical officers of health appointed by the councils of the rural districts, regulations with respect to duties of the said medical officers of health, and also with respect to their salaries in

every case in which one-half of the salary of a medical officer of health is intended to be payable by a county council or by the council of a county borough under the local Government Act, 1888;

And whereas, with respect to the said medical officers of health, it is expedient that further provision should be made with regard to the following matters; that is to say,—

(a) the duties of the said medical officers of health in connexion with the use of diphtheria anti-toxin in cases of disease, as well for the prevention of disease as for the prevention of its extension; and

(b) the compensation of the said medical officers of health for the discharge of the said duties in every case in which one-half of the salary of a medical officer of health is intended to be payable as aforesaid:

NOW THEREFORE, we, the Local Government Board, in the exercise of our powers in that behalf, do hereby Order as follows:—

ARTICLE I.—We sanction the provision by the council of every county borough, the council of every urban district, and the council of every rural district, or their contracting with any person for the provision, in pursuance of section 133 of the Public Health Act, 1875, of a temporary supply of diphtheria anti-toxin, and of medical assistance in connexion with the temporary supply of diphtheria anti-toxin, for the poorer inhabitants of their district, subject to the following condition, that is to say,—

The arrangements with respect to the keeping, distribution, and use of the diphtheria anti-toxin shall be made in accordance with the advice of the medical officer of health.

ARTICLE II.—The duties assigned to the medical officer of health by such one of the two General Orders dated the twenty-third day of March, one thousand eight hundred and ninety-one, as applies to his case, or other the regulations for the time being issued by us and superseding the regulations prescribed by the said Orders, shall be deemed to extend to and to include all action by the medical officer of health in the execution of this Order.

ARTICLE III.—Where one-half of the salary of a medical officer of health is intended to be payable by a county council or by the council of a county borough under the Local Government Act, 1888, such one of the two General Orders dated the twenty-third day of March, one thousand eight hundred and ninety-one, as applies to his case, or other the regulations for the time being issued by us and superseding the regulations prescribed by the said Orders, shall apply and have effect as if the regulations thereby prescribed included a provision authorising the council of the district, or requiring them at our direction, to pay from time to time to the medical officer of health, in addition to the salary or other compensation payable under the said regulations, a reasonable compensation for all action by the medical officer of health in the execution of this Order.

ARTICLE IV.—This Order may be cited as "The Diphtheria Anti-toxin (Outside London) Order, 1910."

Given under the Seal of Office of the Local Government Board, this fifteenth day of August, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

Date of publication in the London Gazette, 16th August, 1910.

Appendix II.

NOTIFICATION OF OPHTHALMIA NEONATORUM—GENERAL ORDER.

(5th February, 1914.)

To the Mayor, Aldermen, and Commons of the City of London, in Common Council assembled: To the Councils of the several Metropolitan Boroughs, Municipal Boroughs, and other Urban Districts in England and Wales; To the Councils of the several Rural Districts in England and Wales; To all Medical Practitioners; To all certified Midwives; And to all others whom it may concern.

Whereas [*recites section* 130 *of the P. H. A.*, 1875, *as amended by the P. H. A.*, 1896].

And whereas ophthalmia neonatorum as hereinafter defined is an endemic and an infectious disease:

Now therefore, we, by this our Order and in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, and the Public Health Act, 1896, and of every other power enabling us in that behalf, do hereby make the following regulations, that is to say:—

Definitions.

Article I.—In these regulations, unless the contrary intention appears:—

(a) Words importing the masculine gender include females;

(b) Words in the singular include the plural, and words in the plural include the singular;

(c) Expressions referring to writing include references to printing, and to other modes of representing or reproducing words in a visible form, and references to printing include references to other mechanical modes of so representing or reproducing words;

(d) The expression "local authority" means, as the case may be, the mayor, aldermen, and commons of the city of London in common council assembled, the council of a metropolitan borough, the council of a municipal borough or other urban district, or the council of a rural district;

(e) The expression "district" means the district subject to the jurisdiction of the local authority for the purposes of the Public Health (London) Act, 1891, or of the Public Health Act, 1875, as the case may be;

(f) The expression "medical officer of health" means medical officer of health of a local authority;

(g) The expression "medical practitioner" means any person for the time being registered under the Medical Acts;

(h) The expression "certified midwife" means a woman certified under the Midwives Act, 1902;

(i) The expression "ophthalmia neonatorum" means a purulent discharge from the eyes of an infant commencing within twenty-one days from the date of its birth.

Commencement of Regulations.

Article II.—These regulations shall come into operation on the first day of April, one thousand nine hundred and fourteen, and shall then and thereafter apply and have effect throughout England and Wales, and shall be enforced and executed by every local authority.

Supply of Forms of Notification.

Article III.—For the purposes of these regulations every local authority shall provide and maintain a sufficient supply of printed copies of the form set out in the schedule to these regulations, and shall as soon as practicable after these regulations come into operation, and afterwards from time to time when application is made to them, furnish printed copies of the said form to every certified midwife resident or practising within the district of the local authority.

Notice of Provisions of Regulations.

ARTICLE IV.—The local authority shall forthwith cause notice to be given to all medical practitioners and to all certified midwives resident or practising within the district of the local authority of the duties imposed upon them by these regulations.

Notification by Medical Practitioners.

ARTICLE V.—(1) Subject to the provisions of these regulations every medical practitioner, on first becoming aware that a child upon whom he is in professional attendance is suffering from ophthalmia neonatorum, shall forthwith make and sign a notification of the case in the form prescribed for the purpose of certificates under section 3 of the Infectious Disease (Notification) Act, 1889, at the same time stating in writing, either on the form or on a separate sheet attached to the form, the date of birth of the child, the name and address of the parent or other person, if any, having charge of the child, and the date of the onset of the disease, and shall transmit the notification and statement aforesaid to the medical officer of health for the district within which the place of residence of the parent or other person, if any, having charge of the child is situate at the date of the notification :

Provided that a medical practitioner shall not be required to notify a case of ophthalmia neonatorum under these regulations in any of the following cases ; that is to say,—

(a) If the case is notifiable or has been notified under the Infectious Disease (Notification) Act, 1889, section 55 of the Public Health (London) Act, 1891, or under the provisions of any local Act or Order made thereunder ; or

(b) If the case has been notified by a certified midwife as hereinafter provided.

(2) Every medical practitioner who transmits to the medical officer of health a notification of a case of ophthalmia neonatorum under the Infectious Disease (Notification) Act, 1889, section 55 of the Public Health (London) Act, 1891, or under the provisions of any local Act or Order made thereunder, shall at the same time state in writing, either on the form or on a separate sheet attached to the form, the date of birth of the child, the name and address of the parent or other person, if any, having charge of the child, and the date of the onset of the disease.

Notification by Certified Midwives.

ARTICLE VI.—Subject to the provisions of Article X. of these regulations every certified midwife who has reasonable grounds for supposing that a child upon whom she is in attendance or whom she is called in to visit in the course of her practice is suffering from ophthalmia neonatorum, shall, unless the case has been already notified by a medical practitioner, forthwith make and sign a notification of the case in the form set out in the schedule to these regulations, and shall transmit the notification to the medical officer of health for the district within which the place of residence of the parent or other person, if any, having charge of the child is situate at the date of the notification.

Transmission of Notifications.

ARTICLE VII.—A notification to be transmitted to a medical officer of health in pursuance of these regulations shall be enclosed in a sealed envelope addressed to that officer and may be transmitted by being delivered to him or by being delivered at his office or residence, or may be sent by prepaid letter post addressed to him at his office or at his residence.

Fees for Notification.

ARTICLE VIII.—(1) The local authority shall pay to every medical practitioner a fee of two shillings and sixpence for each notification duly made, signed and transmitted by him under these regulations if the case occurs in

Appendix II. his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution.

(2) The local authority shall pay to every certified midwife a fee of one shilling for each notification duly made, signed and transmitted by her under these regulations.

(3) Every fee shall be paid as soon as practicable after the end of the quarter during which the notification was sent, and the local authority shall not require before payment an account of fees claimed under these regulations.

(4) The said fees shall in each case be deemed to cover all expenses, including the cost of transmission.

Duties of Medical Officers of Health.

ARTICLE IX.—The duties assigned to the medical officer of health by the Sanitary Officers (London) Order, 1891, or the Sanitary Officers (Outside London) Order, 1910, as the case may be, shall be deemed to extend to and to include all action by the medical officer of health in the execution of these regulations.

Notification not required in certain Cases.

ARTICLE X.—Nothing in these regulations shall be deemed to require a notification to be transmitted to a medical officer of health in respect of the child of an inmate of any building, ship, vessel, boat, tent, van, shed or similar structure belonging to His Majesty the King.

Short Title.

ARTICLE XI.—These regulations may be cited as "The Public Health (Ophthalmia Neonatorum) Regulations, 1914."

SCHEDULE.

PUBLIC HEALTH (OPHTHALMIA NEONATORUM) REGULATIONS, 1914.

Form of Notification by Certified Midwife.

To the Medical Officer of Health for the of .
[*Address*]____________________.

I, the undersigned, being a midwife holding the certificate No. of the Central Midwives Board, hereby notify that the infant child of * ____________________

who was born on [*state date of birth*] , 19 , is in my opinion suffering from ophthalmia neonatorum, and that I first noticed that the child was suffering from this disease [*state the time and date*]____________________

Name of midwife____________________.

Address of midwife____________________

____

Date , 19 .

* State name and address of parent or other person, if any, having charge of the child.

NOTE.—The address, &c. of the medical officer of health should be filled in by the local authority before the forms are furnished to the midwife.

Given under the Seal of Office of the Local Government Board, this fifth day of February, in the year one thousand nine hundred and fourteen.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

Date of publication in the London Gazette, 6th February, 1914.

Appendix II.

ON THE PROVISION OF ISOLATION HOSPITAL ACCOMMODATION BY LOCAL AUTHORITIES (*g*).

This memorandum is designed to represent to those who are responsible for the health of communities the importance of providing hospital accommodation for the isolation of cases of infectious disease, and of doing so before the actual invasion of their districts by such disease. It is further intended to indicate to local authorities, more especially to those of districts of small or moderate size, the means by which they may most advantageously make such provision. Some general principles to be held in view by all authorities who propose to provide, by means of loans sanctioned by the Local Government Board, isolation hospitals for their districts will be set forth in the course of the memorandum. Those in italics are points which the Board regard as indispensable.

The provision of hospital accommodation for cases of infectious diseases is to be regarded primarily as a measure of sanitary defence, for the protection of the public against the spread of these diseases. It is true that such accommodation incidentally serves other useful purposes. Thus, it is frequently of value for the relief of individuals suffering from infectious disease, whose sufferings may be alleviated and their recovery promoted by affording them better accommodation and attendance than they are able to obtain at their own homes. Or it may be the means of avoiding serious inconvenience and pecuniary loss, as when infectious disease breaks out in a school, a lodging house, or a place of business. But, nevertheless, the most important function which such a hospital serves is that of the isolation of the first cases of infectious disease with a view to preventing its further spread in the household or locality invaded.

In order that a hospital may fulfil this function it is essential that it should be in readiness beforehand. Experience has shown that on the invasion of an epidemic, a hospital, even of temporary kind, can seldom be provided and got ready for use until the time when it would have been of most service is past. The accommodation, moreover, which is required when an epidemic has become established is on a larger scale than would have sufficed for the isolation of the first cases; and hospitals hurriedly erected during the stress of an epidemic are never satisfactory in construction or suited to the permanent needs of the district.

An isolation hospital being intended primarily for the protection of the public at large rather than for the benefit of individuals, it is undesirable that admission should be subject to restrictive charges and conditions which may tend to prevent the use of the hospital by the poorer portion of the community; that is to say, by those who have the least facilities for isolation and treatment at their own homes. In some districts, however, *e.g.*, at health resorts, it may be advisable to provide special accommodation of a superior kind, such as private wards, for persons willing to pay for it.

Area to be served by a Hospital.—The extent of area for which an isolation hospital may serve will depend in some degree upon considerations of local topography. If the area be too large the usefulness of the hospital will be diminished, owing to the difficulties attending the conveyance of patients over long distances. But, on the other hand, the unnecessary multiplication of small hospitals is to be avoided on grounds of economy and of efficiency. As compared with that of several smaller hospitals, the establishment of a single hospital containing an equal number of beds saves the cost of duplicating various buildings, appliances, and officers; it facilitates the classification of patients according to the diseases from which they are suffering; and it enables a more efficient staff to be maintained, since the hospital is less likely to remain empty for considerable periods. Hence, where districts are not very large or populous, combination for the purpose of providing hospital accommodation is often of advantage. In the less densely populated parts of the country, a market town with the surrounding rural district, or the several sanitary districts comprised in one poor law union, may form a convenient area for the purpose of combined hospital provision. A hospital intended

(*g*) See the Isolation Hospital Acts, 1893, *ante*, p. 1885, and 1901, *ante*, p. 1982.

Appendix II. solely for small-pox may often with advantage serve a larger area than a hospital for other infectious diseases. The modes by which local authorities may combine for the provision of hospitals are set forth in an office memorandum on "Isolation Hospitals," which may be obtained on application, for the guidance of local authorities desirous of such combination or of establishing hospitals under the sanction of the Local Government Board.

Size of Hospital in proportion to population.—The amount of permanent isolation hospital accommodation which should be provided in proportion to the population will depend upon various considerations, among the most important of which are the character of the district, whether urban or rural; the rate of increase of population; the housing and the habits of the people; and the amount of intercourse with other places from which infectious disease may be introduced. As a rough estimate, one bed for every thousand inhabitants is sometimes adopted, but in view of the diverse circumstances of different districts this cannot be regarded as a definite standard. Moreover, the sufficiency of the hospital accommodation will depend not merely upon the aggregate number of beds, but also upon the way in which they are arranged in wards. In a single block with wards connected together only one disease can safely be treated at a time; and thus, at a hospital containing only one such block, occasions may arise when, owing to the hospital being partly occupied by one disease, a case of a second disease requiring isolation cannot safely be taken in, although there may be a number of beds empty at the time.

It is common to find that the demand for hospital accommodation, when people have come to appreciate the benefits of its use, increases far beyond what was at first anticipated; and for this reason, as well as to allow for growth of the population, and for the possible need for temporary extensions during epidemics, it is well at the outset to provide for the contingency of future enlargement.

Site.—In selecting a site for an isolation hospital the following considerations should be had in view:—It should be convenient of access, and, as far as practicable, central for the population and area which it is to serve; but of course not in a very populous neighbourhood. (In the case of hospitals in which small-pox is intended to be received the choice of site must be specially governed by considerations as to the number of inhabitants in the neighbourhood, which will be referred to later on.) It will be of much convenience if sewers and a public water service are available; but, if not, a sufficient supply of wholesome water must be provided, and arrangements will have to be made for the treatment of the sewage by application to land, due care being taken to avoid pollution of any well or spring or of any river. The site should be in a healthy and open situation with a dry subsoil, and should be preferably of a compact and regular shape, and not too steep. Its area will depend upon the size of the hospital, and, except in the case of a very small hospital, should rarely be less than two acres; indeed, it is well to obtain a larger site than may at first be required, in order to afford space for subsequent extension if necessary. More land, too, will be needed if the sewage has to be disposed of on the site. *The site, or so much of it as is to form the grounds of the hospital, should be enclosed by a wall or close fence at least* 6 *feet* 6 *inches in height, and every building which is to contain infected persons or things should be at least* 40 *feet distant from the boundary* (*h*).

Hospital buildings.—These should be of three classes, viz.: 1st, ward-blocks for the reception of the sick; 2nd, administration-block for the housing of the staff and stores; and 3rd, out-offices, as laundry and mortuary. In hospitals for permanent use these buildings should be of brick or stone. Temporary buildings, as, for instance, buildings constructed of wood or corrugated iron, are ill suited for permanent use as hospitals, for the reason that it is difficult to maintain them at a proper temperature during extremes

(*h*) If desired, an open unclimbable railing may be substituted for a wall or close fence for so much of the boundary as is within supervision and control from the administration block or porter's lodge, as between the points X-X on the annexed block plan A, but in that case a second line of unclimbable fence should be constructed within the first, as indicated on the plan. In very unfrequented situations a stout hedge or shrubbery between two rows of barbed wire fencing or unclimbable iron railing may sometimes suffice in place of a wall or close fence.

Appendix II.

of hot and cold weather; moreover they are less durable than brick or stone buildings, requiring more frequent repairs in order to keep them in a properly weather-proof condition, and they are liable to be destroyed by fire and storm. *It is not the practice of the Local Government Board in ordinary cases to sanction loans for iron hospitals or for hospital buildings of temporary character.*

Existing buildings originally designed for a different purpose, such as dwelling houses, even when of large size, are rarely found to be well adapted for the reception of patients; especially for the accommodation at one time of patients suffering from different infectious diseases. An existing house, however, may sometimes serve as the administration-block, if it have sufficient land attached on which to erect ward-blocks.

The *administration-block*, which should be kept free from patients and infected articles, should be so placed as to control the entrance to the hospital grounds, unless a porter's lodge is intended to be erected. It should contain quarters for the matron or caretaker, and a sufficient number of bedrooms for the nurses and servants who will be required to work the hospital when in full operation; also a nurses' sitting-room; a kitchen (preferably in a one-storey projection with top ventilation), store-rooms, dispensary, etc. In hospitals of considerable size quarters for a resident medical officer will also be necessary. It is well to provide in the administration-block accommodation on a scale somewhat in excess of what may be at first required, in order that it may be available for future extensions of the hospital, temporary or permanent; but in any case the block should be so planned that it can be easily enlarged in the future if necessary.

The *ward-blocks* should be one-storey buildings, unless where in exceptional cases or at large hospitals exigencies of space may render it necessary to construct blocks of two storeys; in such case each storey should have a separate entrance from the open air. The annexed plans illustrate two different types of ward-block suitable for small or moderate-sized hospitals. The type illustrated in plan C is the most advantageous, as regards both cost of construction and convenience of administration, where a number of patients of both sexes suffering from the same disease have to be treated at one time. The number of beds in each ward will vary with the requirements of the district, and it is sometimes found desirable to make one ward rather larger than the other, as indicated on the plan, in order that young children of both sexes may be treated in the women's ward. The space in the centre of the block over the nurse's duty-room and entrance-hall (the height of which need not be so great as that of the wards) is sometimes utilised as a day-room for convalescent patients.

Plan B shows a ward-block with small wards separately entered from the open air under a verandah. Accommodation of this kind is useful not only for cases of a second disease, but also under a variety of circumstances, as for the keeping under observation of a case of doubtful nature; for the segregation of a complicated, delirious, or offensive case; or as private wards for paying patients, etc.

Single-bed wards in connection with a block of the type of plan C are sometimes found useful for the segregation of a case of the same disease as that treated at the same time in the main wards, but small wards so situated cannot be safely used for patients with a different disease, or for cases of which the nature is still doubtful. A convenient position for such single-bed wards is indicated on the plan.

For very large hospitals other types of ward may be found of advantage.

In the ward-blocks each bed must have at least 12 *linear feet of wall space,* 144 *square feet of floor space, and* 2,000 *cubic feet of air space.* In calculating the latter any height of wards above 13 feet should not be taken into account. The walls should be of adequate thickness; and the inner face of the walls as well as the floors and woodwork should be constructed with smooth impervious surfaces and rounded angles, so as to facilitate cleanliness and to avoid spaces which may harbour dust and dirt. Ventilation should be by windows on opposite sides of the ward; the windows should be double-hung sashes with fanlight above, and the fanlight should be made to fall inwards, hopper-fashion, with side cheeks to prevent down draughts. The area of the windows should be sufficient but not excessive; one square foot of window to every

Appendix II. 70 cubic feet of ward space is a suitable proportion. The best aspect for the ward-blocks is usually with the windows facing respectively south-east and north-west. The wards should have adequate means of warming, which may with advantage be so contrived as to furnish a supply of warm fresh air. An ample supply of hot water for baths should be provided, and bath-rooms should be capable of being warmed. The closets and slop-sinks should be placed in annexes separated from the wards by cross-ventilated lobbies. The closets should be water-closets where practicable ; and the slop-sinks should be of an appropriate pattern adapted to receive the solid and liquid contents of bed-pans, the waste-pipe being 3 inches in diameter and arranged similarly to the soil-pipe of a water-closet.

The *out-offices* will comprise such buildings as laundry, disinfecting-chamber, mortuary and ambulance-shed ; and in large establishments a boiler-house and engine-house may be needed. Except in very small hospitals, the laundry should comprise a wash-house, a drying-closet and an ironing-room. An apparatus should be provided for the disinfection by steam of bedding and articles which cannot be washed. The mortuary should be in a cool and unobtrusive position, and should be lighted from the north only.

A discharging block is not unfrequently provided, consisting of an undressing-room, a bath-room, and a dressing-room, in which convalescents may take their final bath and put on clean clothes before leaving the hospital.

Each building which is to contain infected persons or things should be at least 40 feet distant from any of the other buildings.

The drains of each block should be trapped from the common drain and ventilated separately by an inlet just above the trap and by ventilating shafts at their highest points.

The annexed block plan A illustrates the arrangement upon a rectangular site of about two acres of a hospital containing sixteen beds, in two ward-blocks with administration-block and out-offices ; space being also reserved for future extensions. The best arrangement of the buildings will, however, in practice largely depend upon the shape and contour of the site.

If, owing to the bleakness of the site, it is considered desirable that the several blocks should be connected by covered ways, these should not be enclosed, but should be open at the sides. A screen for protection against wind and driving rain may be provided if desired.

Hospitals for Small-pox.—In view of the frequently demonstrated liability of small-pox hospitals to disseminate that disease to neighbouring communities, and in order to lessen the risk of such occurrence, the Board require the following conditions to be complied with in the case of small-pox hospitals provided by means of loans sanctioned by them :

1st. *The site must not have within a quarter of a mile of it either a hospital, whether for infectious diseases or not, or a workhouse, asylum, or any similar establishment, or a population of as many as* 200 *persons.*

2nd. *The site must not have within half a mile of it a population of as many as* 600 *persons, whether in one or more institutions, or in dwelling-houses.*

3rd. *Even where the above conditions are fulfilled, a hospital must not be used at one and the same time for the reception of cases of small-pox and of any other class of disease.*

Useful information on the administration of isolation hospitals, derived from experience of them in various parts of England and Wales, will be found in a report [C.—3290] of the Medical Department, 1882—re-issued in 1901.

W. H. POWER, *Medical Officer.*

Local Government Board, Medical Department,
May, 1902.

APPENDIX TO MEMORANDUM ON THE PROVISION OF ISOLATION HOSPITAL ACCOMMODATION BY LOCAL AUTHORITIES.

The annexed plan D for an Observation Block is intended to provide isolation accommodation for single cases of infectious diseases, for cases of mixed infection, or for cases of doubtful diagnosis ; and is arranged in such a

way that one nurse may, assuming that rigid precautions are taken, attend to more than one such case. **Appendix II.**

It will be noted that the new plan D only provides 1,440 cubic feet of air-space per bed instead of the 2,000 cubic feet required in ward-blocks. This has been permitted in view of the separation of individual patients and the efficient cross-ventilation which the plan provides, expense at the same time being diminished.

ARTHUR NEWSHOLME, *Medical Officer.*

Local Government Board, Medical Department,
March, 1908.

ISOLATION HOSPITALS.

MEMORANDUM FOR THE GUIDANCE OF LOCAL AUTHORITIES IN APPLYING TO THE LOCAL GOVERNMENT BOARD FOR SANCTION TO LOANS FOR THE PROVISION OF ISOLATION HOSPITALS; FOR THE CONSTITUTION OF JOINT HOSPITAL DISTRICTS; AND IN PROCEEDINGS UNDER THE ISOLATION HOSPITALS ACT, 1893.

(A) UNDER THE PUBLIC HEALTH ACT, 1875.

1. Under section 131 of the Public Health Act, 1875:

"Any local authority may provide for the use of the inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may build themselves such hospitals or places of reception; or contract for the use of any such hospital or part of a hospital or place of reception; or enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

"Two or more local authorities may combine in providing a common hospital."

2. If a local authority desire to obtain a loan to defray the cost of providing a hospital, the sanction of the Local Government Board must be obtained (Public Health Act, 1875, sections 233 and 234). Any provisional agreement entered into by the local authority for the purchase of land as a site for the hospital should be made conditional upon such sanction being given. Provision of hospitals by local authorities.

3. Any application to the Board for sanction to a loan should be accompanied by:

(1) A copy of the local authority's resolution directing the application to be made;

(2) Detailed estimates (in forms which the Board supply on application) of the cost of the proposed works;

(3) A map (say on the scale of inch to the mile) showing the boundaries of the sanitary district or districts for which the hospital is to serve, the parish and sanitary district in which the site is comprised, the position of the proposed hospital site, and the means of access to the site from the various parts of the district or districts; and

(4) A further map on a larger scale (say on the scale of 25 inches to the mile) or plan showing the area and shape of the proposed site, and its relation to houses and lands, in its immediate vicinity, and showing also the points of the compass;

(5) Plans of the proposed hospital buildings, in cases where the application includes the cost of such buildings;

(6) A statement showing the number of persons residing within a quarter of a mile and half a mile, respectively, from the site;

(7) Information as to the available water supply and the proposed means for disposing of the sewage of the hospital; and

(8) Particulars (in forms which the Board supply on application) respecting the assessable value and the existing debt for sanitary purposes of the district or districts.

Appendix II.

4. The plans of the hospital buildings should be submitted to the Board at an early stage of their preparation. If they are not found to be satisfactory, the Board are usually willing to arrange for a conference on the subject at their office between representatives of the local authority (accompanied by their architect and medical officer of health) and representatives of the Board's medical and architectural departments.

5. Before sanctioning a loan the Board usually cause a public local inquiry into the matter to be held in the district by one of their inspectors, at which any person interested may attend and give evidence. Due public notice of any such inquiry is given in the locality concerned.

Provision of hospitals by two or more local authorities acting in combination.

6. When two or more local authorities desire to combine in providing a hospital, it is often desirable to form the combined districts into a joint hospital district, by a provisional order under section 279 of the Public Health Act, 1875, with a joint hospital board as the governing body.

A joint hospital board consists of members elected by the local authorities concerned, together with such ex-officio members as the Local Government Board may by the provisional order determine (section 280, Public Health Act, 1875).

Joint boards exercise their powers independently of the local authorities comprised within the united district.

By section 244 of the Public Health Act they are enabled to borrow money, and under section 280 a joint board is a body corporate with power to hold lands for the purposes of their constitution.

They are also empowered to issue precepts to the local authorities within the united district for the sums to be contributed by such authorities towards the expenses of the joint board, and, in case of d fault, to proceed in a summary manner to raise such sums.

Moreover, by the provisional Order constituting the united district the joint board are directly invested with various powers in relation to their meetings and officers, conduct of business, contracts, purchase of land either by agreement or compulsorily, arbitration, audit of accounts, legal proceedings, and with any other powers which the special circumstances of the case may require, so as to enable them to perform their duties in the most convenient and efficient manner.

7. Applications to the Board for the issue of provisional Orders forming united districts for hospital purposes should be accompanied by copies of resolutions of the local authorities concerned, and should be made as soon as practicable after the 1*st October* in each year.

8. Applications for loans by joint hospital boards should be made in the manner indicated in paragraphs 3 to 5 above.

(B) UNDER THE ISOLATION HOSPITALS ACT, 1893.

9. Under the Isolation Hospitals Act, 1893, county councils are empowered to constitute hospital districts, consisting in each case either of a single local area or of two or more local areas as defined by section 26 of the Act; and under section 8 (3) "if any local authority, having jurisdiction within any part of the proposed hospital district, object to the formation of such a district, or to the addition or subtraction thereto or therefrom of any local area within their jurisdiction, such authority may at any time within three months from the date of the Order appeal to the Local Government Board, and the decision of such Board shall be conclusive."

10. Under section 22 of the Act "a county council may borrow on the security of the county rate, and in manner provided by the Local Government Act, 1888, any money required for the purpose of carrying into effect the provisions of this Act." The sanction of the Local Government Board is required to any such borrowing by a county council.

11. Hospital committees, and the local authorities having jurisdiction in the areas included within a hospital district set up by a county council, are not empowered themselves to borrow money for the purposes of the Isolation Hospitals Act; but under section 22 of that Act any loans borrowed by a county council to carry the provisions of the Act into effect, "and any other money

expended by them for the purposes of this Act, together with interest thereon . . . shall be repaid to the county council out of the local rate," as in the Act directed. Appendix II.

12. In dealing with applications from county councils for sanction to loans under this Act, the Board act upon the principles (set out in the earlier sections of the present memorandum) which guide them in dealing with applications by local authorities for sanction to borrow money for hospital purposes under the Public Health Act.

Local Government Board,
Whitehall, S.W.

ELECTIONS.

LOCAL GOVERNMENT ACT, 1894.—SCALE OF EXPENSES AT ELECTIONS, AND AT POLLS CONSEQUENT ON PARISH MEETINGS —CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
20*th November*, 1894.

SIR,—I am directed by the Local Government Board to forward to you copies of an Order which they have issued under section 48 of the Local Government Act, 1894, fixing, for the purposes of any election under the Act and of any poll consequent on any parish meeting, a scale of expenses for each county and county borough in which on the date of the Order no scale framed under the section was in force. The Order also applies to any election under the Act in any county or county borough, and to any poll consequent on any parish meeting in any county, to which election or poll any scale in force in the county or county borough does not extend.

The Board may state that in prescribing the scale they have deemed it right to have regard to the scales which have been adopted in cases where councils of counties or county boroughs have exercised the powers conferred on them by the section.

It will be understood that the scale fixed by the Order prescribes the maximum payments, and that the charge within the scale should in each case depend on the circumstances.

The Board have been led to understand that in some rural parishes there are suitable persons who will be willing to give their services as presiding officers, or polling clerks, or counting clerks, without remuneration or for a nominal remuneration, with the view of reducing the charge which would otherwise fall on the parish in respect of the poll. The returning officer will, of course, avail himself of the services of such persons as far as practicable.

I am, Sir, your obedient servant,
HUGH OWEN, *Secretary*.

GENERAL ORDER.—SCALE OF EXPENSES.—ELECTIONS UNDER LOCAL GOVERNMENT ACT, 1894.

(November 20th, 1894.)

TO THE COUNTY COUNCIL of each Administrative County in England and Wales; To the Mayor, Aldermen, and Burgesses of each County Borough in England and Wales; To the Guardians of the Poor of each Poor Law Union in England and Wales; To the Urban Sanitary Authority of each Urban Sanitary District in England and Wales which is not a borough; To the Returning Officers at the first elections under the Local Government Act, 1894, of guardians, urban district councillors, rural district councillors, and parish councillors respectively; To the Returning Officers at any poll consequent on a parish meeting for any rural parish in England and Wales; And to all others whom it may concern.

WHEREAS [*recites section* 48 (7) (8), *and section* 75 (2) *of the L. G. A.*, 1894].

NOW THEREFORE, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our Order, declare that the scale of expenses in the schedule hereto shall, for the purposes of any election under

Appendix II
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the Local Government Act, 1894, and of any poll consequent on any parish meeting, be fixed for each county and county borough in England and Wales in which, on the date hereof, no scale framed under section 48 of the said Act is in force, and for the purposes of any election under the said Act in any such county or county borough, and of any poll consequent on any parish meeting in any such county, to which election or poll any such scale in force in the county or county borough does not extend.

SCHEDULE.

SCALE OF EXPENSES

I.—DISBURSEMENTS.

Payments made for—	
1. Use of room or building, including lighting and firing . . .	Actual and necessary cost, not exceeding for each polling station 10*s.*
2. Fitting up rooms required for poll, or, when necessary, hiring or constructing a polling station with its fittings and compartments . . .	Actual and necessary cost.
3. Each ballot box required to be purchased	Actual and necessary cost.
4. Use of each ballot box, when hired .	Actual and necessary cost, not exceeding 2*s.* 6*d.*
5. Printing and providing ballot papers .	Actual and necessary cost, not exceeding for the first 500, £1; and for every 100, or fraction of 100, an addition of 1*s.*
6. Stationery at each polling station .	Actual and necessary cost, not exceeding 2*s.* 6*d.*
7. Each stamping instrument, purchase, or hire, or alteration . . .	Actual and necessary cost, not exceeding 10*s.*
8. Copies of the register of parochial electors	Actual and necessary cost.
9. Printing and providing notices, nomination forms, and other documents required in and about the election or poll and costs of publishing same	Actual and necessary cost.
10. Returning officers' travelling expenses, where necessary, to make arrangements for poll	By rail, 3rd class; by road, where necessary actual cost, not exceeding 9*d.* a mile each way.
11. Conveyance of ballot boxes, papers, etc., from office to polling place .	Actual and necessary cost (by railway or parcel post where practicable).
12. Conveyance of ballot boxes from the polling stations to the place where the ballot papers are counted .	By rail, actual fare, 3rd class; by road, actual cost, not exceeding 1*s.* a mile.
13. For the services of police where required	The sum actually charged.

	When the poll is open for 12 hours or upwards.	less than 12 hours but not less than 8 hours.	less than 8 hours but not less than 6 hours.	less than 6 hours.
	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*
14. For each presiding officer, to include all duties as deputy returning officer and all expenses, not exceeding .	3 0 0	2 0 0	1 10 0	1 0 0
15. For the clerk at a polling station, to include all expenses, not exceeding	1 0 0	0 15 0	0 12 6	0 10 0

16. For each person employed in counting votes, to include all expenses, not exceeding:—	£ *s.* *d.*
In urban parishes	0 10 0
In rural parishes	0 5 0

Sums in addition to the maximum amount specified in 1 and 5 may be allowed to the returning officer by the local authority, if they are satisfied that there were exceptional circumstances which rendered necessary the incurring of an expense in excess of the amount specified.

Under 14 and 15 an additional allowance of 10*s.* shall be given for each night necessarily spent away from home.

In determining under 14 the charge of any presiding officer, regard should be had as to whether he acted as deputy returning officer in the counting of the votes, and whether the poll has been taken with respect to one election or to more than one.

The employment of a second clerk at a polling station with the remuneration specified in 15 may be authorised by the local authority, if the services of such clerk are considered by them to be requisite.

The above-mentioned allowances are to include the remuneration for all elections held on the same day.

In a rural parish where there is only one contested election and the number of parochial electors does not exceed 200, the returning officer or his deputy will be allowed one counting clerk, and for every 200 additional parochial electors an additional counting clerk. Where there are contests for both district and parish councillors, additional counting clerks may be employed, provided that in no case shall the number exceed 4.

In an urban parish, the number of counting clerks charged for shall in no case exceed 1 for each 500 electors.

II.—FOR SERVICES AND OTHER EXPENSES OF RETURNING OFFICERS.

Fee for conducting the election, giving the prescribed notices, preparing and supplying nomination papers and distributing, verifying, and adjudicating upon same, appointing deputy returning officers, arranging for or conducting the poll, counting the votes, declaring result and making return of same and generally performing all the duties which a returning officer is required to perform under the Local Government Act, 1894, or the rules of the Local Government Board made thereunder, and including all disbursements and expenses other than those for which special provision has been hereinbefore made, as follows :—

RURAL DISTRICT COUNCILLORS AND PARISH COUNCILLORS.

CONTESTED ELECTIONS.	Where 10 parishes or under. For each.	Where between 10 and 20. For each beyond 10.	Where between 20 and 30. For each beyond 20.	Where 30 and upwards. For each beyond 30.
	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*
For every parish for which an an election is held—				
(*a*) Where the election is for either a rural district councillor or councillors only *or* for parish councillors only, not exceeding	2 0 0	1 10 0	1 0 0	0 10 0
(*b*) Where the elections are for a rural district councillor or councillors *and* parish councillors on the same day, not exceeding	3 0 0	2 5 0	1 10 0	0 15 0

Additional Payments where a Parish is divided into Wards—

	£ s. d
In case (*a*), for each ward	0 10 0
In case (*b*), for each ward	0 15 0

Appendix II.

Uncontested Elections.	For each parish up to 10.	For each additional parish.
	£ s. d.	£ s. d.
For every parish for which an election is held—		
(*a*) For a rural district councillor or councillors	0 10 0	0 5 0
(*b*) For parish councillors . . .	0 5 0	0 5 0

GUARDIANS.

A.—MUNICIPAL BOROUGHS.

CONTESTED ELECTIONS.

	£ s. d.
In a parish within a borough, for each 750 parochial electors within the parish or ward for which the election is held, or fractional part of 750 .	2 0 0

UNCONTESTED ELECTIONS.

In a parish within a borough not divided into wards	1 0 0
In a parish within a borough which is divided into wards, for each ward .	0 10 0

B.—URBAN DISTRICTS OTHER THAN BOROUGHS.

CONTESTED ELECTIONS.

In a parish within an urban district, for each 750 parochial electors within the parish or ward for which the election is held, or fractional part of 750 .	2 0 0

Where a deputy returning officer acts under Article 13 of "The Guardians (Outside London) Election Order, 1894," he shall, in addition to the fee allowed him as presiding officer, be entitled to be paid, as remuneration for his services as deputy returning officer, one-third of the amount allowed to the returning officer in respect of that district, to be paid by such returning officer out of his fee.

UNCONTESTED ELECTIONS.

	£ s. d.
In a parish within an urban district not divided into wards	1 0 0
In a parish within an urban district divided into wards, for each ward .	0 10 0

URBAN DISTRICT COUNCILLORS.

CONTESTED ELECTIONS.

In a parish within an urban district other than a borough, for each 750 parochial electors within the parish or ward for which the election is held, or fractional part of 750	2 0 0

UNCONTESTED ELECTIONS

In a parish within an urban district other than a borough not divided into wards	1 0 0
In a parish within an urban district other than a borough divided into wards, for each ward	0 10 0

POLLS CONSEQUENT ON PARISH MEETINGS.

	£	s.	d.
For every poll consequent on a parish meeting where such poll is not taken as to the election of parish councillors—			
In a parish with a population of 300 or upwards according to the census of 1891, not exceeding	1	10	0
In a parish with a population of less than 300 according to the same census, not exceeding	1	0	0

The payment under this head is to cover all the services of the returning officer, including those of presiding officer, and if a poll is taken on more than one question on the same day in any parish, only one fee shall be charged.

	£	s.	d.
For services preliminary to poll, if a poll is not taken in consequence of the withdrawal of any candidates—			
In a parish with a population of 300 or upwards according to the census of 1891	0	10	0
In a parish with a population of less than 300 according to the same census .	0	5	0

Given under the Seal of Office of the Local Government Board, this twentieth day of November, in the year one thousand eight hundred and ninety-four.

(L.S.) G. SHAW-LEFEVRE, *President.*

WALTER FOSTER,
HUGH OWEN, *Secretaries.*

ELECTION OF URBAN DISTRICT COUNCILLORS—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
January 1st, 1898.

SIR,—I am directed by the Local Government Board to state that they have had under consideration the rules for the election of urban district councillors for any urban district other than a borough.

The Board have hitherto in each year issued an Order under the powers conferred upon them by the Local Government Act, 1894, prescribing rules for the ordinary election of urban district councillors in that year. They think, however, that the time has now come when a permanent Order might be issued prescribing Rules which shall apply to all elections of urban district councillors, and they have issued an Order accordingly. [Order No. 37,501. 2 copies.]

The new Order prescribes rules not only for the elections held in any year to fill any ordinary vacancies in the urban district councillors, but also for the first election of any additional urban district councillors, and for the first election of any councillors to be elected for any urban district which may hereafter be constituted. The Order also prescribes rules for every election which may be held to fill a casual vacancy in the office of urban district councillor. Except as regards any election the proceedings in respect of which have been already commenced, the Urban District Councillors (Additional Councillors and New Districts) Election Order, 1895, and the Urban District Councillors Casual Vacancies Election Order, 1895, are rescinded. [Order No. 37,502. 2 copies.]

Under rule 1 of the new Order, you will be the returning officer for the purposes of any election held under it, unless you are unable or unwilling to act. If such should be the case as regards any ordinary election of urban district councillors, to be held in the present year, the urban district council should, as early as practicable, appoint some other person to act.

The Board may draw attention to rule 12 of the Order, under which polls for the election of urban district councillors and of guardians are, under certain circumstances, to be taken together. They may also draw attention to the corresponding provision in rule 12 of the Order which they have issued prescribing rules for the election of guardians for any urban parish. Under rule 13 of the latter Order, the returning officer at the election of urban district councillors will, when the polls for the two elections are to be taken together, be the deputy returning officer for the purposes therein mentioned in relation to the poll for the election of guardians for the parish.

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The Board may refer to the tables in the First Schedule to the Order, in which the times for the proceedings at any election of urban district councillors are prescribed or defined. As regards any ordinary election to be held this year, the times for the proceedings will be as follows :

1. Notice of election	Not later than Friday, the 11th March.
2. Receipt of nomination papers . .	Not later than 12 o'clock at noon on Thursday, the 17th of March.
3. Sending notice of decision as to validity of nomination papers.	Not later than Friday, the 18th of March.
4. Making out statement as to persons nominated.	Not later than Saturday, the 19th of March.
5. Withdrawal of candidates . . .	Not later than 12 o'clock at noon on Tuesday, the 22nd of March.
6. Notice of poll	Five clear days at least before the day of election.
7. Day of election	Monday, the 4th of April, or such other day not being earlier than Saturday, the 2nd of April, or later than Wednesday, the 6th of April, as may for special reasons be fixed by the county council.

Two copies of the Order as to the election of urban district councillors and also of that as to the election of guardians are enclosed, and the Board request that if you do not intend to act as returning officer, you will send them, together with this letter, to the person appointed in your place. The Orders will be placed on sale, so that further copies may, if required, be purchased from Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C., either directly or through any bookseller.

I am directed to add that by the Expiring Laws Continuance Act, 1897, the Local Government Elections Act, 1896, has been continued in force until the 31st of December, 1898. Hence if any default arises during the present year with respect to any election of urban district councillors or to the first meeting after the ordinary election of such councillors, or if from an election not being held, or being defective, or otherwise, the urban district council has not been properly constituted, the county council may by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of any such election or meeting, and properly constituting the district council, and may, if it appears to them necessary, direct the holding of an election or meeting, and fix the dates for any such election or meeting.

I am, Sir, your obedient servant,

HUGH OWEN, *Secretary.*

The Clerk to the Urban District Council.

URBAN DISTRICT COUNCILLORS—GENERAL ORDER.

RULES AS TO NOMINATION AND ELECTION.

(January 1st, 1898.)

TO THE COUNTY COUNCIL of every Administrative County in England and Wales, except the Administrative County of London ; To the Urban District Council of every Urban District in England and Wales, which is not a Borough ; To the Clerk to every such Urban District Council ; And to all others whom it may concern.

WHEREAS [*recites sections* 23, 48 *of the L. G. A.*, 1894].

And whereas by the Urban District Councillors (Additional Councillors and New Districts) Election Order, 1895, and the Urban District Councillors Casual Vacancies Election Order, 1895, we prescribed rules for the first election of any additional urban district councillors in any urban district other than a borough in England and Wales, and the first election of urban district councillors in any such urban district which might thereafter be constituted,

and for every election to be held to fill a casual vacancy in the office of urban district councillor in any such urban district: **Appendix II.**

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do hereby rescind the said Urban District Councillors (Additional Councillors and New Districts) Election Order, 1895, and the said Urban District Councillors Casual Vacancies Election Order, 1895, except as regards any election the proceedings in respect of which have been already commenced;

And we do hereby order that, subject to any directions which may be given by us, and until we otherwise order, the following rules shall apply to, and shall be observed in connexion with, elections of urban district councillors as hereinafter set forth; that is to say,—

(a) the election held in any year to fill any ordinary vacancies in the urban district councillors for any urban district in England and Wales;

(b) the first election of any additional urban district councillors for any urban district in England and Wales, and the first election of urban district councillors in any such urban district which may hereafter be constituted; and

(c) every election which may be held to fill a casual vacancy in the office of urban district councillor in any such urban district.

Returning officer.

1.—(1) The clerk to the urban district council shall be the returning officer.

(2) If the clerk is unwilling to act as returning officer, or if the office of clerk is vacant at the time when any duty relative to the election has to be performed by the returning officer, or if the clerk from illness or other sufficient cause is unable to perform such duty, the urban district council shall appoint some other person to act as returning officer or to perform such of the duties of the returning officer as then remain to be performed, as the case may be.

(3) In any case which does not come within either paragraph (1) or paragraph (2) of this rule, the returning officer shall be a person appointed by the county council.

(4) The returning officer shall appoint an office for the purpose of the election.

(5) The returning officer may, in writing, appoint a fit person to be his deputy for all or any of the purposes relating to the election of urban district councillors. A deputy returning officer shall have all the powers, duties, and liabilities of the returning officer in relation to the matters in respect of which he is appointed as deputy.

Day of election.

2.—(1) The day of the election of urban district councillors shall be that prescribed or defined for the purpose by the First Schedule to this Order.

(2) Provided that in any urban district the day of the election of urban district councillors and guardians shall be the same.

Notice of election.

3. Not later than the day prescribed for that purpose by the First Schedule to this Order, the returning officer shall prepare and sign a notice of the election, and shall cause public notice to be given of the same in the district in accordance with rule 30 of this Order. The notice shall be in the Form No. 1 in the Second Schedule to this Order, or in a form to the like effect (*i*).

Nomination of candidates.

4.—(1) Each candidate for election as an urban district councillor shall be nominated in writing.

(2) The nomination paper shall state the name of the district or ward (*k*) for which the candidate is nominated, the surname and other name or names in full of the candidate (*l*), and his place of abode (*m*) and description (*n*), and whether he is qualified as a parochial elector of some parish within the district, or by having during the whole of the twelve months preceding the election resided in the district. It shall be signed (*o*) by two parochial

(*i*) As to the effect of defects in a notice of election, see *Howes* v. *Turner* (1876), 1 C. P. D. 670; 40 J. P. 680.

(*k*) See *Marton* v. *Gorrill* (1889), 23 Q. B. D. 139; 54 J. P. 181.

(*l*) See *Mather* v. *Brown* (1876), 1 C. P. D. 596; *Henry* v. *Armitage* (1883), 12 Q. B. D. 257; 48 J. P. 424; *Miller* v. *Everton* (1895), 64 L. J. Q. B. 692; 59 J. P. 358; *R.* v. *Casey*, [1914] 2 I. R. 243.

(*m*) See *R.* v. *Coward* (1851), 16 Q. B. 819; *R.* v. *Hammond* (1852), 17 Q. B. 772.

(*n*) See *R.* v. *Tugwell* (1868), L. R. 3 Q. B. 704; 33 J. P. 101.

(*o*) See *Moorhouse* v. *Linney* (1885), 15 Q. B. D. 273; 49 J. P. 471; *Bowden* v. *Besley*

Appendix II. electors (*p*) of the district, or, if the district is divided into wards, of the ward, as proposer and seconder, and no more, and shall state their respective places of abode. It shall be in the form set out in the notice in the Form No. 1 in the Second Schedule to this Order, or in a form to the like effect.

(3) The name of more than one candidate shall not be inserted in any one nomination paper.

(4) A parochial elector shall not sign more nomination papers than there are urban district councillors to be elected for the district or ward for which the election is to be held. He shall not sign a nomination paper for the district, or for any ward, unless he is registered as a parochial elector in respect of a qualification therein. Neither shall he sign nomination papers for more than one ward in the urban district (*q*).

(5) If any parochial elector shall sign nomination papers for more than one ward in the urban district, or shall sign a number of nomination papers larger than the number of urban district councillors to be elected for the district or ward, such of the nomination papers signed by him as relate to the first ward for which a nomination paper signed by him is received by the returning officer shall alone be valid, and of the nomination papers signed by him which relate to the district or to such ward, such as are first received by the returning officer up to the number of urban district councillors to be so elected shall alone be valid (*r*). Provided that, for the purposes of this paragraph, nomination papers not properly filled up and signed shall be excluded (*s*).

Nomination papers to be provided.

5. The returning officer shall provide nomination papers. Any parochial elector may obtain nomination papers from him free of charge.

Time for sending in nomination papers.

6. Every nomination paper shall be sent (*t*) to the returning officer so that it shall be received at his office within the time prescribed for that purpose by the First Schedule to this Order. A nomination paper received after that time shall not be valid. The returning officer shall note on each nomination paper whether it was received before or after that time.

Dealing with nomination by returning officer.

7.—(1) The returning officer shall number the nomination papers in the order in which they are received by him; and the first valid nomination paper received for a candidate shall be deemed to be the nomination of that candidate.

(2) The returning officer shall, as soon as practicable after the receipt of any nomination paper, examine the same and decide whether it has or has not been properly filled up and signed by two parochial electors of the district or ward, and whether it is or is not invalid under rule 4 (5) or rule 6 (*u*). His decision that a nomination paper has been so filled up and signed, and is not invalid as aforesaid, shall be final, and shall not be questioned in any proceeding whatever.

(3) If the returning officer shall decide that a nomination paper is invalid, he shall put a note on it to this effect, stating the grounds of his decision, and he shall sign such note (*x*).

(4) After deciding that the nomination of any candidate is valid, or (except

(1888), 21 Q. B. D. 309; 52 J. P. 536; *Gledhill* v. *Crowther* (1889), 23 Q. B. D. 136; 53 J. P. 677; *Harding* v. *Cornwell* (1889), 60 L. T. 959. A nomination paper may be signed by the proposer and seconder before the name of the candidate is filled in (*Cox* v. *Davies*, [1898] 2 Q. B. 202).

(*p*) See *Harman* v. *Park* (1881), 7 Q. B. D. 369; 45 J. P. 714.

(*q*) See *Knill* v. *Towse* (1890), 24 Q. B. D. 697; 54 J. P. 789.

(*r*) See *Burgoyne* v. *Collins* (1882), 8 Q. B. D. 450; 46 J. P. 390.

(*s*) See *Northcote* v. *Pulsford* (1875), L. R. 10 C. P. 476; 39 J. P. 487.

(*t*) Personal delivery by the candidate himself, or his nominator, is not required.

(*u*) He has no power to decide as to the qualifications of the candidates (*Pritchard* v. *Mayor, etc. of Bangor* (1888), 13 App. Cas. 241; 52 J. P. 564; *Harford* v. *Lynskey*, [1899] 1 Q. B. 852; 63 J. P. 263). But the only remedy is by petition, not *mandamus* (*Ex parte Thompson*, Times, March 5th, 1892). As to how soon a petition based on a rejection of a nomination may be presented, see *In re Grangemellon Election Petition*, [1909] 2 I. R. 90.

(*x*) An erroneous decision given *bonâ fide* is not misconduct so as to render him liable to be made respondent to an election petition (*Harmon* v. *Park* (1880), 6 Q. B. D. 323; 45 J. P. 436).

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where nomination of the candidate has been decided to be valid) that a nomination paper for any candidate is invalid, the returning officer shall, not later than the day prescribed for that purpose by the First Schedule to this Order, send, by post or otherwise, notice of his decision to the candidate.

Statement as to persons nominated.

8. Not later than the day prescribed for that purpose by the First Schedule to this Order, the returning officer shall make out a statement in the Form No. 2 in the Second Schedule to this Order, or in a form to the like effect, containing the names, places of abode, and descriptions of the persons nominated as urban district councillors for the district or for the several wards thereof, and also containing a notice of his decision as regards such candidate as to whether he has been nominated by a valid nomination paper or not. He shall forthwith cause a copy thereof to be suspended in the board room, if any, of the urban district council, and another to be affixed on the principal external gate or door of the offices of the district council. If there are no such offices he shall cause such notice to be posted in some conspicuous place or places within the district.

Withdrawal of candidates.

9. Any candidate may withdraw his candidature by delivering or causing to be delivered at the office of the returning officer, within the time prescribed for that purpose by the First Schedule to this Order, a notice in writing of such withdrawal, signed by him (*y*).

Relation of nomination to election.

10. Section 56 of the Municipal Corporations Act, 1882, shall be altered and adapted in its application to the election of urban district councillors in the district, so as to provide as follows:

(1) If the number of candidates who receive valid (*a*) nominations and who do not withdraw their candidature under rule 9 exceeds that of the persons to be elected as urban district councillors, the councillors shall be elected from amongst the persons nominated (*b*).

(2) If the number of valid nominations does not exceed the number of urban district councillors to be elected, or if, by the withdrawal of any candidate as provided by rule 9, the number of candidates for the district is reduced to a number not exceeding the number to be elected, or if the number of candidates is otherwise (*c*) so reduced, the returning officer shall, as early as practicable, give public notice in the district in accordance with rule 30 of this Order to the effect that no poll will be taken, and that the candidates, or the remaining candidates, as the case may be, will be declared to be elected; and also, in the case of the ordinary election, if the number of such candidates is less than the number of urban district councillors to be elected, that such of any retiring councillors for the district as were highest on the poll at their election, or, if the poll was equal or there was no poll, as shall have been selected for that purpose by the returning officer by lot to make up the required number, will be declared to be deemed to be re-elected.

(3) If there is no valid nomination, the returning officer shall, as early as practicable, give public notice in the district in accordance with rule 30 of this Order that no poll will be taken, and, in the case of the ordinary election, that the retiring councillors will be declared to be deemed to be re-elected.

(4) The returning officer shall forthwith send, by post or otherwise, a copy of any notice under this rule to each of the persons who will be declared to be elected, or to be deemed to be re-elected.

(*y*) A withdrawal is irrevocable.

(*a*) That is, one to which no objection has been made before the returning officer, or to which any objection made has been disallowed by him, not nominations absolutely valid for all purposes. See *per* Lords WATSON and HERSCHELL in *Pritchard* v. *Mayor, etc. of Bangor*, *ante*, p. 2304. There may be a valid nomination within the meaning of s. 56 of the Municipal Corporations Act, 1882, notwithstanding that the candidate is disqualified under s. 12 (*Hobbs* v. *Morey*, [1904] 1 K. B. 74; 68 J. P. 132).

(*b*) As to the effect of inserting in the ballot paper the name of a candidate who has validly withdrawn his candidature, see *Wilson* v. *Ingham* (1895), 64 L. J. Q. B. 775; 59 J. P. 614.

(*c*) As, for instance, by death. See *R.* (or *Westacott*) v. *Stewart*, [1898] 1 Q. B. 552; 62 J. P. 229; and compare *Urquhart* v. *Air*, [1910] S. C. 54.

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(5) The notice shall be in the Form No. 3 or the Form No. 4, as the case may be, in the Second Schedule to this Order, or in a form to the like effect.

Days and hours of poll.

11.—(1) The poll, if any, shall be held on the day of election as prescribed or defined by the First Schedule to this Order, and the hours during which the poll shall be open shall be such as shall be fixed by the county council by any general or special order, or if no such order is in force in the district then such hours as were applicable at the last ordinary election of urban district councillors or guardians, so, however, that the poll shall always be open between the hours of six and eight in the evening (*d*).

(2) Provided that in any urban district the hours during which any poll shall be open for the election of urban district councillors and guardians shall be the same.

When polls to be taken together.

12.—(1) If the urban district or any ward or wards of the district is or are co-extensive with a parish or united parishes for which an election of guardians is to be held, or with any wards or ward of such a parish, or if the district is not divided into wards such district, or if it is divided into wards any one ward of the district, includes the whole of such parish, united parishes, or ward of a parish, the poll for the election of urban district councillors for the district, and any poll for the election of guardians for the parish, united parishes, or ward shall be taken together.

(2) If the county council shall be of opinion, in any other case, that the polls for the election of urban district councillors and for the election of guardians can conveniently be taken together, they may give directions accordingly to the returning officers for the two elections, and the polls for such elections shall thereupon be taken together.

(3) The returning officer for the election of urban district councillors shall act as the deputy returning officer at any poll for the election of guardians, if the polls for the two elections are to be taken together.

Polling districts.

13.—(1) (a) Any parish, or, where a parish is united with another parish for the election of guardians, the united parishes, shall, if wholly comprised in the urban district, be a polling district, or be subdivided into polling districts for the election of urban district councillors, if a poll for the said elections and a poll for the election of guardians are to be taken together.

(b) If any parish is divided into wards for the election of guardians, paragraph (a) of this rule shall apply with the substitution of "ward" for "parish."

(c) Provided that if any parish, united parishes, or ward of a parish for the election of guardians is or are divided into polling districts for the election of county councillors, the whole of each polling district being comprised in the parish, united parishes, or ward and the lists of parochial electors are made out in separate parts for such polling districts, each district shall, if a poll for the election of urban district councillors and a poll for the election of guardians are to be taken together, be a polling district for the election of urban district councillors.

(d) Subject as aforesaid, the returning officer may, if he thinks fit, divide the district into polling districts for the election of urban district councillors, but each district shall consist of an area for which a separate list of parochial electors will be available.

(e) The polling districts for the election of urban district councillors and of any guardians, when the polls for the two elections are to be taken together, shall be the same.

(2) If the district is divided into polling districts, each parochial elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate.

(*d*) The door of a polling station may be closed before the time if there are sufficient voters inside to occupy the remainder of the time in voting, and papers issued before the hour of closing may be placed in the box, though the hour has struck (*Worcester* (1880), 3 O'M. & H. 184). But no papers should be issued after the hour, though to persons already in the station when the doors are closed (*Gribbin* v. *Kiker* (1873), Ir. Rep. 7 C. L. 30; *Ex parte Elliott*, Times, June 3rd and Oct. 27th, 1891; *Midhurst* v. *Lough* (1901), 17 T. L. R. 210).

Polling places and stations.

14. The returning officer shall determine the number and situation of the polling places and polling stations.

Provided as follows:

(a) No premises licensed for the sale of intoxicating liquor shall be used for a polling station;

(b) The polling stations for the election of urban district councillors and of any guardians, when the polls for the two elections are taken together, shall be the same;

(c) Where the number of parochial electors in the urban district, or (if the district is divided into polling districts) in any polling district is not more than five hundred, only one polling station shall, unless the county council otherwise direct, be provided for the urban district or polling district; and so on for each additional five hundred parochial electors, or for any less number of parochial electors over and above the last five hundred.

Notice of poll

15.—(1) If a poll has been taken, the returning officer shall, within the time prescribed for that purpose by the First Schedule to this Order, give public notice thereof in accordance with rule 30 of this Order. The notice shall specify—

(a) the day and hours fixed for the poll;

(b) the number of urban district councillors to be elected for the district;

(c) the names, place of abode, and description of each candidate for the district whom he has decided to have been nominated by a valid nomination paper, and who has not withdrawn his candidature;

(d) the names of the proposer and seconder who signed the nomination paper of each candidate;

(e) a description of the polling districts, if any; and

(f) the situation and allotment of the polling places and polling stations (*e*) and the description of the persons entitled to vote thereat.

(2) The notice shall be in the Form No. 5 in the Second Schedule to this Order, or in a form to the like effect.

(3) If polls are to be taken together in the district as to the election of both urban district councillors and guardians, the returning officer may, if he thinks fit, give one notice only for both polls, and such notice shall be in the Form No. 6 in the Second Schedule to this Order, or in a form to the like effect.

Presiding officer.

16. The returning officer, or some person appointed by him for the purpose, shall preside at each polling station. The person presiding at any polling station shall be called the presiding officer. Provided that at any polling station the same person shall act as presiding officer for the election of urban district councillors and guardians, the polls for which are to be taken together.

Compartments of polling stations. Ballot papers.

17. The returning officer shall furnish every polling station with a sufficient number of compartments in which the voters can mark their votes screened from observation, and shall furnish each presiding officer with such number of ballot papers as may be necessary for effectually taking the poll at the election.

Polling agents.

18. If there are only two candidates, each of them may, in writing, appoint a polling agent for each polling station, who may be paid or unpaid. If there are more than two candidates, any number of them, being not less than one-third of the whole number of candidates, may, in writing, appoint one polling agent for each polling station, who may be paid or unpaid. Any such appointment shall be delivered at the office of the returning officer not less than two clear days before the day of the poll. Except as aforesaid, no polling agent, whether paid or unpaid, shall be appointed for the purposes of the election (*f*).

(*e*) In *Pembroke Election Petition*, [1908] 2 I. R. 158, 433, two polling stations were announced: in fact there were ten polling tables at the two places indicated: held immaterial.

(*f*) A candidate has a right to be present in a polling station if he does not interfere with the polling or misconduct himself, although he does not act as his own polling agent (*Clementson* v. *Mason* (1875), L. R. 10 C. P. 209). The appointment of too many polling agents will not necessarily avoid an election (*Pembroke Election Petition, supra*).

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Questions to elector.

19.—(1) The presiding officer may, and if required by any parochial elector of the district, or any polling agent appointed under rule 18, shall, put to any elector at the time of his applying for a ballot paper, but not afterwards, the following questions, or one of them, and no other:

(a) Are you the person entered in the parochial register for the parish of [*or* for the ward] as follows [*read the whole entry from the register*]?

(b) Have you already voted at the present election of urban district councillors for the urban district of [in this or any other ward]?

(2) A person required to answer either of these questions shall not receive a ballot paper or be permitted to vote until he has answered it (*g*).

Counting the votes.

20.—(1) If the returning officer appoints a person to act as deputy returning officer for the district as regards the custody and opening of the ballot boxes, the counting and recording of the votes, and the declaration of the number of votes given for each candidate, and of the election of the candidate or candidates to whom the largest number of votes has been given, the person so appointed shall, in addition to his other powers and duties, have all the powers and duties of the returning officer in relation to the matters aforesaid, and to the decision of any question as to any ballot paper and otherwise as to the ballot papers (*h*).

(2) If polls for the election both of urban district councillors and guardians are taken together, the same person shall discharge the duties referred to in paragraph (1) of this rule in relation to both elections.

(3) The votes shall be counted in the district or in some place near thereto as soon as practicable after the close of the poll.

Equality of votes.

21. If an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer who counts the votes may, if a parochial elector of the district, give such additional vote in writing, but shall not otherwise be entitled to vote at the election (*i*). If in such a case the returning officer, or deputy returning officer, as the case may be, is not a parochial elector of the district, or is unwilling to vote, he shall determine by lot which of the candidates whose votes are equal shall be elected (*k*).

Who shall be deemed to fill casual vacancies at ordinary election.

22. In the event of one or more casual vacancies being filled up at the ordinary election, where there is a poll, the persons elected by the fewest votes shall be deemed elected to fill such vacancies. Should there be an equality of votes between such persons the urban district council shall determine by ballot which of such persons shall be deemed elected to fill the casual vacancy. If the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the fewest votes, or if the votes are equal the person selected by the urban district council by ballot from the persons so elected shall hold office for the shorter period. Where there is no poll the person or persons to be deemed to be elected to fill the casual vacancy or vacancies shall be determined by the urban district council by ballot.

(*g*) The first question may be truthfully answered even if the name be erroneously spelled in the register (*R.* v. *Thwaites* (1853), 1 E. & B. 604), or even if it be a totally different name from the real name of the voter provided it was intended to designate him and no other person (*R.* v. *Fox*, (1887) 16 Cox, C. C. 166). In either case the vote would be good on a scrutiny (*Oldham case*, (1869) 1 O'M. & H. 153). No oath can be administered to a voter.

(*h*) A ballot paper is validly marked if the voter has so placed his mark as to make it clear for which particular candidate he intended to vote, although the mark as placed is outside the ruled space or parallelogram printed on the paper for its reception (*Pontardawe R. D. C. Election*, [1907] 2 K. B. 313; 71 J. P. 371. See also *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733; 39 J. P. 776; *Stepney* (1886), 4 O'M. & H. 37; *Buckrose* (1886), 4 O'M. & H. 110; *Berwick-on-Tweed* (1880), 44 L. T. 289; *Oldham Petition: Cooper* v. *Ogden* (1908), 72 J. P. 115; 24 T. L. R. 242).

As to the right of a candidate to be present at the counting, see *Clementson* v. *Mason*, *supra*.

(*i*) If he votes when there is no tie, a petition will lie (*Brittain* v. *Ritchie* (1899), 43 Sol. J. 532), and the returning officer will be liable to an action for penalties (*Brittain* v. *Whitehorn*, Times, March 30th, 1900).

(*k*) This avoids the difficulty which arose in *Crone* v. *Waugh*, Local Government Chronicle, 1892, p. 599.

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Declaration of result of poll.

23.—(1) The declaration of the result of the poll shall be in the Form No. 7 in the Second Schedule to this Order, or in a form to the like effect.

(2) The returning officer, or deputy returning officer, as the case may be, making the declaration shall forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted. If the declaration is made by a deputy returning officer, he shall forthwith send it to the returning officer.

Publication of result of election.

24.—(1) The returning officer shall prepare and sign a notice (*l*) of the result of the election in the district, or in all the wards of the district, as the case may be, and shall by such notice declare to be elected or to be deemed to be re-elected the persons who, under rule 10, are to be declared to be elected or to be deemed to be re-elected without a poll being taken. The notice shall be in the Form No. 8 in the Second Schedule to this Order, or in a form to the like effeet.

(2) The returning officer shall cause a copy of the notice to be suspended in the board room, if any, of the urban district council, and he shall also cause public notice thereof to be given in accordance with rule 30 of this Order. The returning officer shall also send copies of the notice to the persons elected or deemed to be re-elected.

Application and adaptation of Ballot Act, 1872.

25. The provision of the Ballot Act, 1872, which, with adaptations and alterations, are set out in the Third Schedule to this Order, and only such provisions of that Act, shall, subject to such adaptations and alterations, apply to the election of urban district councillors in like manner as in the case of a municipal election.

Provided as follows:

(a) Such application shall be subject to the provisions of this Order.

(b) If polls are taken together for the election of urban district councillors and guardians, one ballot box may, if the returning officer think fit, be used for the two elections; but if separate ballot boxes are used for the two elections respectively, no vote for any urban district councillor shall be rendered invalid by the ballot paper being placed in the box intended for the reception of ballot papers for guardians.

(c) The ballot papers used at the election of urban district councillors shall be of a different colour from that of any ballot papers used in the election of any guardians in the district when the polls for both elections are taken together.

Adaptation of Municipal Corporations Act, 1882.

26.—(1) The provisions of sections 74 and 75 of the Municipal Corporations Act, 1882, which, with adaptations and alterations, are set out in the Fourth Schedule to this Order, and such of the provisions of that Act as relate to the acceptance of office, resignation, re-eligibility of holders of office, and filling of casual vacancies, and are, with adaptations and alterations, set out in the Fifth Schedule to this Order, shall, subject to such adaptations and alterations, apply to the election of urban district councillors and to the persons elected or deemed to be re-elected thereat.

(2) In the application of Part IV. of the Municipal Corporations Act, 1882 (relating to corrupt practices and election petitions) (*m*), as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*n*), the following adaptations and alterations shall have effect:

(a) Such application shall be subject to the provisions of this Order.

(b) References to the election of urban district councillors shall be substituted for references to a municipal election or to an election to a corporate office. "Urban district" shall be substituted for "borough," "rate applicable to the general expenses of the urban district council" shall be substituted for "borough fund or borough rate," "returning officer" shall be substituted for "town clerk," and "voter" shall mean "a parochial elector or a person who votes or claims to vote at an election of urban district councillors."

(*l*) The notice is entirely distinct from the declaration of the result of the poll, and cannot alter the effect of a numerical majority of the votes given for any candidate. See *Pritchard* v. *Mayor of Bangor*, *ante*, p. 2304.

(*m*) *Ante*, p. 1708.

(*n*) *Ante*, p. 1764.

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(c) In the application of the sub-section (2) of section 89 such sub-section shall be adapted and altered so as to read as follows:

"(2) The security shall be to the amount of fifty pounds unless in any case the High Court or a judge thereof, on summons, order that the same shall be to a lesser amount, or to a larger amount not exceeding three hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other."

Adaptation of Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

27. In the application of the Municipal Elections (Corrupt and Illegal Practices) Act (*o*), the following adaptations and alterations shall have effect:

(1) Such application shall be subject to the provisions of this Order.

(2) The expressions " urban district or ward of an urban district," "returning officer of urban district councillors," and "rate applicable to the general expenses of the urban district council" shall be deemed to be substituted in the Act for "borough or ward," "town clerk," and "borough fund or rate," respectively.

(3) The expression "corporate office" in the Act shall mean "the office of urban district councillor" and "municipal election" shall mean "an election of one or more urban district councillors"; and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(4) So much of section 13 of the Act as permits one polling agent to be employed in each polling station shall not apply, except so far as the employment of polling agents is permitted by Rule 18 of this Order.

(5) An election petition complaining of the election on the ground of an illegal practice may be presented at any time within six weeks after the day of election.

(6) In section 34 of the Act "burgess roll" shall mean "register of parochial electors."

(7) Section 37 of the Act shall be read as if a reference to an election of urban district councillors was substituted for a reference to any of the elections mentioned in the First Schedule to the Act.

Expenses.

28.—(1) Any sum which may be payable to the returning officer in respect of his services in the conduct of the election of urban district councillors, or in respect of expenses incurred in relation to the election, shall be defrayed by the urban district council out of the fund or rate applicable to their general expenses under the Public Health Act, 1875.

(2) If polls for the election of urban district councillors and guardians are taken together, one half of any expenses which may be payable in respect of the two polls jointly, including the remuneration of any officers employed in the conduct thereof, shall be deemed to have been incurred in relation to the poll for the election of urban district councillors, and shall be defrayed cordingly.

Wards.

29.—(1) If the district is divided into wards for the election of urban district councillors the rules in this Order shall apply to each of such wards as if it were the district.

Provided as follows:

(a) If the district is so divided, an elector shall not be permitted to vote in more than one ward.

(b) Any sum which in pursuance of this Rule and of Rule 28 would be charged to any ward shall be charged to the district.

Publication of notices

30. Any public notice required by this Order shall be given by posting the same on or near the principal door of each church and chapel in the district, and in some conspicuous place or places within the district.

Mark instead of signature.

31. In place of any signature required by this Order, it shall be sufficient for the signatory to affix his mark, if the same is witnessed by two parochial electors.

Misnomer. Inaccurate description

32. No misnomer or inaccurate description of any person or place named

(*o*) *Ante*, p. 1764.

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in any notice or nomination paper under this Order shall hinder the full operation of such notice or paper with respect to that person or place, provided the description of that person or place is such as to be commonly understood.

Definition of "urban district" and "ordinary election."

33. In this Order the expression "urban district" means an urban district other than a borough, and the expression "ordinary election" means the election held in any year to fill any ordinary vacancies in the urban district councillors for the district, and includes any first election of additional urban district councillors for the district or election to fill a casual vacancy in the office of urban district councillor for the district which can be held at the time of the election to fill such ordinary vacancies, and any first election of urban district councillors for a newly constituted district which can be held at the time appointed for ordinary elections.

Adaptation of forms to elections other than the ordinary election.

34. If the election is not the ordinary election, such modifications as may be necessary shall be made in the forms contained in the Second Schedule to this Order.

This Order may be cited as the "Urban District Councillors Election Order, 1898."

FIRST SCHEDULE.

a.—TIMES FOR THE PROCEEDINGS AT THE ORDINARY ELECTION OF URBAN DISTRICT COUNCILLORS IN ANY YEAR.

Proceeding.	Time.
1. Notice of election	Not later than the second Friday in March, or, if the first Monday in April is Easter Monday, the first Friday in March.
2. Receipt of nomination papers . .	Not later than twelve o'clock at noon on the following Thursday.
3. Sending notice of decision as to validity of nomination papers.	Not later than the following Friday.
4. Making out statement as to persons nominated.	Not later than the following Saturday.
5. Withdrawal of candidates . . .	Not later than twelve o'clock at noon on the following Tuesday.
6. Notice of poll	Five clear days at least before day of election.
7. Day of election	The first Monday in April, or, if that is Easter Monday, the last Monday in March; or, in either case, such other day not being earlier than the preceding Saturday, or later than the following Wednesday, as may for special reasons be fixed by the county council.

b.—TIMES FOR THE PROCEEDINGS AT FIRST ELECTIONS OF URBAN DISTRICT COUNCILLORS OR AT ELECTIONS TO FILL CASUAL VACANCIES, IF NOT HELD AT THE TIME OF THE ORDINARY ELECTIONS.

Proceeding.	Time.
1. Notice of election	Not later than fourteen days before the day of election.
2. Receipt of nomination papers . .	Not later than twelve o'clock at noon on the fourth day after the day on which the notice of election was given.
3. Sending notice of decision as to validity of nomination papers . . . 4. Making out statement as to persons nominated	Not later than the day after the last day for the receipt of nomination papers.

Appendix II.

b.—TIMES FOR THE PROCEEDINGS AT FIRST ELECTIONS, ETC.—*continued.*

Proceeding.	Time.
5. Withdrawal of candidates . . .	Not later than twelve o'clock at noon on the fourth day after the last day for the receipt of nomination papers.
6. Notice of poll	Five clear days at least before day of election.
7. Day of election	In the case of first elections : Such day as may be fixed by the returning officer, but so that, subject to any special provision in the Order assigning any additional councillors or constituting the new urban district, as the case may be, it shall not be later than six weeks from the date when such Order comes into operation. In the case of elections to fill casual vacancies : Such day as may be fixed by the clerk to the district council, in pursuance of section 66 of the Municipal Corporations Act, 1882, as altered and adapted by the Fifth Schedule to this Order.

SECOND SCHEDULE.

NOTE.—*If the election is not the ordinary election, such modifications as may be necessary should be made in the Forms in the Schedule* (*Rule* 34).

FORM No. 1.

NOTICE OF ELECTION.

* If the urban district is not divided into wards, omit these words.

URBAN DISTRICT OF .

ELECTION OF URBAN DISTRICT COUNCILLORS *[for the several wards in the above-named district].

NOTICE IS HEREBY GIVEN THAT—

1. The day of election of urban district councillors for the said district [*or* wards, *as the case may be*] will be , the day of , 19 .
2. The number of urban district councillors to be elected for the said district [*or* wards, *as the case may be*] is† .
3. Each candidate for election as an urban district councillor must be nominated in writing, and the nomination paper must be sent to me, so that it shall be received at (which is my office for the purpose of the election) not later than twelve o'clock at noon on , the day of , 19 .
4. A parochial elector must not sign more nomination papers than there are urban district councillors to be elected for the district [*or* ward, *as the case may be*], and he must not sign a nomination paper for the district [*or* for any ward thereof], unless he is registered as a parochial elector in respect of a qualification therein. [Neither must he sign nomination papers for more than one ward in the district.]‡
5. Forms of nomination paper may be obtained, free of charge, from me at the above-named office.
6. The nomination paper must be in the following form, or in a form to the like effect :

† If the district is divided into wards, insert the names of the wards, with the number of urban district councillors to be elected for each. A tabular form may be used if preferred.

‡ If the district is not divided into wards, omit these words.

FORM OF NOMINATION PAPER.

URBAN DISTRICT OF .

ELECTION OF URBAN DISTRICT COUNCILLORS for the above district [*or* for the Ward of the above district] in the year 19 .

We, the undersigned, being respectively parochial electors of the said district [*or*

ward] do hereby nominate the under-mentioned person as a candidate at the said election. **Appendix II.**

Names of Candidates.		Place of Abode.	Description.	How qualified (specify qualification according to direction in Instruction 5).
Surname.	Other names in full.			
1.	2.	3.	4.	5.

Signature of Proposer .
Place of abode .
Signature of Seconder .
Place of abode .

*Instructions for filling up Nomination Paper.**

* These instructions form part of the nomination paper.

1. The surname of only one candidate for election must be inserted in column 1.
2. The other names of the candidate must be inserted in full in column 2.
3. Insert in column 3 the place of abode of the candidate.
4. In column 4 state the occupation, if any, of the candidate. If the candidate has no occupation, insert some such description as "gentleman," or "married woman," or "spinster," or "widow," as the case may be.
5. If the candidate is a parochial elector of some parish within the district (that is) if his or her name is registered in the register of parochial electors of such parish, insert in column 5 "parochial elector of parish of ." If the candidate is not a parochial elector of some parish in the district, but he or she has, during the whole of the twelve months preceding the election, resided in the district, insert in column 5 "residence." If the candidate has both these qualifications, it will be sufficient to insert in column 5 one of his or her qualifications, but both may be inserted.

6.—(1) The paper must be signed by two parochial electors of the district [*or* ward] and no more; by one as proposer, and by the other as seconder. The places of abode of the proposer and seconder must also be inserted. Instead of signing, the proposer or seconder may affix his mark, if it is witnessed by two parochial electors.

(2) A parochial elector must not sign more nomination papers than there are urban district councillors to be elected for the district [*or* ward], and he must not sign a nomination paper for the district [*or* ward] unless he is registered as a parochial elector in respect of a qualification therein. [Neither must he sign a nomination paper in more than one ward in the district.]

7. Not later than , the day of , 19 , I shall cause a copy of a statement containing the names, places of abode, and descriptions of the persons nominated for the office of urban district councillor for the said district [*or* wards], and also containing a notice of my decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not, to be [*suspended in the board room of the urban district council and another to be] affixed on the principal external gate or door of the offices of the urban district council.†

* If there is no such board omit these words.

† If there are no such offices, substitute some conspicuous place or places within the district or wards.

8. Any candidate nominated for election may, not later than twelve o'clock at noon on , the day of , 19 , withdraw his candidature by delivering or causing to be delivered at my office for the purposes of the election a notice in writing of such withdrawal signed by him.
9. If the number of candidates who are validly nominated for the district [*or* any ward], and whose candidature is not withdrawn, exceeds that of the persons to be elected, a poll will be taken on , the day of , 19 , of which due notice will be given.

Dated this day of , 19 .

, Returning Officer.

Office for purpose of election.

Appendix II.

FORM No. 2.

STATEMENT AS TO PERSONS NOMINATED.

URBAN DISTRICT OF .

The following is a statement as to the persons nominated for election as urban district councillors for the above-named district [*or* for the several wards in the above-named district].

District (*or* Wards).	Persons nominated.			Decision of Returning Officer that Candidate has not been nominated by a valid Nomination Paper.
	Names (Surnames first).	Place of abode.	Description.	
1.	2.	3.	4.	5.

The candidates opposite whose names no entry is made in column 5 have been validly nominated.

Dated this day of , 19 .

, Returning Officer.

Office for purpose of election.

FORM No. 3.

NOTICE THAT NO POLL WILL BE TAKEN.

URBAN DISTRICT OF .

[Ward of the above district.]

WHEREAS the following candidates have been duly nominated for election as urban district councillors for the said district [*or* ward]: [*Insert names, places of abode, and description of candidates.*]

And whereas the number of those [*or* And whereas the said [*insert name or names*] has [*or* have] since withdrawn his [*or* their] candidature [*or if some other event has occurred causing a person to cease to be a candidate state what it is*], and the number of the remaining] candidates is [equal to *or* less than] the number of persons, namely, to be elected as urban district councillors for the said district [*or* ward].

I do hereby give notice that a poll will not be taken, and that the said [*insert names*] will be declared elected as urban district councillors for the said district [*or* ward]* and also that [*insert names*] retiring urban district councillors for the said district [*or* ward] will be declared to be deemed to be re-elected.

* If the number of candidates or remaining candidates is equal to the number to be elected, or if the election is a first election, or is to fill a casual vacancy omit from * to the end of the sentence.

Dated this day of , 19 .

, Returning Officer.

FORM No. 4.

NOTICE WHERE NO CANDIDATES ARE NOMINATED.

URBAN DISTRICT OF .

[Ward of the above district.]

I do hereby give notice that no candidate has been duly nominated for election as an urban district councillor for the said district [*or* ward],* and that [*insert names*] the retiring urban district councillors for the said district [*or* ward] will be declared to be deemed to be re-elected.

* If the election is a first election, or is to fill a casual vacancy, omit from * to the end of the sentence.

Dated this day of , 19 .

, Returning Officer.

FORM No. 5.

NOTICE OF POLL.

[This form is for use where a poll is taken for the election of urban district councillors only.]

URBAN DISTRICT OF .

ELECTION OF URBAN DISTRICT COUNCILLORS for the above district [*or* for the Ward of the above district] in the year 19 .

NOTICE IS HEREBY GIVEN—

1. That a poll for the election of urban district councillors for the above-named district [*or* ward] will be held on the day of , 19 , between the hours of and .
2. Where the number of urban district councillors to be elected for the district [*or* ward] is .
3. That the names in alphabetical order, places of abode, and descriptions of the candidates for election, and the names of their respective proposers and seconders are as follows :

Names of Candidates (Surnames first).*	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* Insert particulars as to each candidate for the district or ward whose nomination is valid, and who has not withdrawn his candidature.

4.†—(1) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2) The polling districts are as follows : .

5.‡ The situation and allotment of the polling places and polling stations and the description of the persons entitled to vote thereat are as follows : .

6. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election will be [*insert colour*].

Dated this day of , 19 .

, Returning Officer.

Office for purpose of election.

† If the district or ward is not divided into polling districts for the purposes of the election, paragraph 4 should be omitted.

‡ If only one polling place or station, adapt form accordingly.

FORM No. 6.

NOTICE OF POLL.

[This form may be used where polls are taken together for the election of urban district councillors and guardians.]

ELECTION OF URBAN DISTRICT COUNCILLORS AND GUARDIANS for the Urban District of [*or* for the Ward of the Urban District of], and for the Parish of [*or* for the Ward of the Parish of , *or* for the United Parishes of] in the year 19 .

NOTICE IS HEREBY GIVEN—

1. That polls for the election of urban district councillors and of guardians for the above-named district [*or* ward] and parish [*or* ward *or* united parishes] will be held on , the day of , 19 , between the hours of and .
2. That the number of urban district councillors to be elected for the district [*or* ward] is .
3. That the number of guardians to be elected for the parish [*or* ward] is .
4. That the names in alphabetical order, places of abode, and descriptions of the candidates for election, and the names of their respective proposers and seconders are as follows :

Appendix II.

AS URBAN DISTRICT COUNCILLORS.

Names of Candidates (Surname first).	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

AS GUARDIANS.

Names of Candidates (Surname first).	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* If the district, parish, or ward, or united parishes, is not divided into polling districts for the purposes of the election, paragraph 5 should be omitted.

† If only one polling place or station adapt form accordingly.

5.*—(1) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2) The polling districts are as follows : .

6.† The situation and allotment of the polling places and polling stations and the description of the persons entitled to vote thereat are as follows : .

7. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election of urban district councillors will be [*insert colour*], and in the election of guardians will be [*insert colour*].

Dated this day of , 19 .

Office for purpose of election.

, Returning Officer
for the election of urban district councillors and
deputy returning officer for the election of guardians.

FORM No. 7.

DECLARATION OF RESULT OF POLL.

URBAN DISTRICT OF .

ELECTION OF URBAN DISTRICT COUNCILLORS for the above district [*or* for the Ward of the above district] in the year 19 .

I, the undersigned, being the returning officer [*or* deputy returning officer duly authorised [in that behalf] at the poll for the election of urban district councillors for the said district [*or* ward] held on the day of , 19 , do hereby give notice that the number of votes recorded for each candidate at the election is as follows :

Names of Candidates.		Places of Abode.	Number of Votes recorded.
Surnames.	Other Names.		

And I do hereby declare that the said are duly elected urban district councillors for the said district [*or* ward].

Dated this day of , 19 .

Returning Officer
[*or* Deputy Returning Officer].

FORM No. 8.

NOTICE OF RESULT OF ELECTIONS.

URBAN DISTRICT OF .
ELECTION OF URBAN DISTRICT COUNCILLORS for the above district in the year 19 .

I, the undersigned, being the returning officer at the election of urban district councillors for the said district, do hereby give notice that the candidates at the election whose names are entered in column 6 of the statement hereunder opposite to the numbers entered in column 5 have been declared duly elected urban district councillors; and I hereby declare that the persons whose names are entered in the said column 6 [or in column 7],* and opposite to whose names no numbers are entered in column 5, where no polls have been taken, were duly elected [or are to be deemed to be re-elected]* urban district councillors for the district [*or* for the wards opposite to the names of which in column 1 the names of such candidates are entered].

* If the election is a first election, or is to fill a casual vacancy, omit these words and column 7.

District and Wards.	Names of Candidates.		Places of Abode.	Number of Votes recorded.	Names of Candidates elected.	Names of retiring Councillors deemed to be re-elected.
	Surnames.	Other names.				
1.	2.	3.	4.	5.	6.	7.

THIRD SCHEDULE.

PROVISIONS OF THE BALLOT ACT, 1872, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF URBAN DISTRICT COUNCILLORS IN ANY DISTRICT OTHER THAN A BOROUGH.

PROCEDURE AT ELECTIONS OF URBAN DISTRICT COUNCILLORS.

2. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached to a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back. Poll at elections.

If in the register of parochial electors for a parish, the same number is placed opposite to the name of more than one parochial elector, the returning officer shall put a distinguishing mark on each part of the register which contains numbers used in other parts of the register, and when the number of any voter on any part of the register is entered on the counterfoil of a ballot paper, the mark on that part shall also be entered thereon.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Appendix II.

OFFENCES.

Offences in respect of ballot papers and ballot boxes.

3. Every person who—

(1) Forges and counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

(2) Without due authority supplies any ballot paper to any person; or

(3) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(4) Fraudulently takes out of the polling station any ballot paper; or

(5) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election (*p*);

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Infringement of secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of parochial electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote, or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, agent, and person in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour (*q*).

USE OF SCHOOL AND PUBLIC ROOM FOR POLL.

6. The returning officer at an election of urban district councillors may use free of charge, for the purpose of taking the poll or for counting the votes at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of it being used for the purpose of taking the poll or for counting the votes as aforesaid.

The use of any room in an unoccupied house for taking the poll shall not render any person liable to be rated or to pay any rate for such house.

DUTIES OF RETURNING AND ELECTION OFFICERS.

General powers and duties of returning officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of parochial electors, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting the election.

Every deputy returning officer shall, in so far as he acts as returning officer, be deemed to be included in the term returning officer.

(*p*) For a conviction under this clause for trying to destroy by a liquid papers already in the box, see *R.* v. *Chapin* (1910), 74 J. P. 71.

(*q*) See *Stannanought* v. *Hazeldine* (1879), 4 C. P. D. 191; 43 J. P. 352.

Appendix II.

Keeping of order in station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station (*r*).

Powers of presiding officer and administration of oaths, etc.

10. For the purpose of the adjournment of the poll, a presiding officer shall have the power by law belonging to a deputy returning officer in a parliamentary election; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Liability of officers for misconduct.

11. Every returning, presiding clerk, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds (*s*).

No returning officer or officer appointed by him in connection with the election of urban district councillors for any urban district, nor any partner or clerk of any such officer, shall act as agent for any candidate in the management or conduct of his election as an urban district councillor. If any returning officer or officer appointed by him, or the partner or clerk of any such officer, shall so act he shall be guilty of a misdemeanour.

MISCELLANEOUS.

Prohibition of disclosure of vote.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Non-compliance with rules.

13. No election shall be declared invalid by reason of a defect in the title or appointment of the returning officer or deputy returning officer or of a non-compliance with the rules contained in the First Schedule to this Act or in the Urban District Councillors Election Order, 1898, or any mistake in the use of the forms in the Second Schedule to this Act or in the said Order, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act and of the Local Government Act, 1894, and that such non-compliance or mistake did not affect the result of the election (*t*).

PERSONATION.

Definition and punishment of personation.

24. The following enactments shall be made with respect to personation at an election of urban district councillors:

It shall be the duty of the returning officer to institute a prosecution (*u*) against any person whom he may believe to have been guilty of personation (*x*), or of aiding, abetting, counselling, or procuring the commission (*y*) of the offence of personation by any person,

(*r*) Should confusion arise from a rush being made into the polling station the presiding officer is justified in having it cleared and order restored before proceeding with the poll (*Worcester* (1880), 3 O'M. & H. 184).

(*s*) A person who has lost the election by reason of such misfeasance, act, or omission on the part of the officer or clerk is a person aggrieved within the meaning of this provision. And an action will lie to recover the penalty without any allegation of malice or want of reasonable care (*Pickering* v. *James* (1873), L. R. 8 C. P. 489; 37 J. P. 679).

(*t*) The result of the election does not necessarily mean the result as to another candidate being elected at the poll. The result would be affected if the majority was substantially reduced (*per* GROVE, J., *Hackney* (1874), 2 O'M. & H. 84). For an instance of non-compliance with rules not avoiding the election, see *Pembroke Petition*, [1908] 2 I. R. 158, 433.

(*u*) It is not necessary either to charge in the indictment, or to prove, that the presiding officer at the polling station where the offence is alleged to have been committed was duly appointed (*R.* v. *Garvey* (1887), 16 Cox, C. C. 252.)

(*x*) See definition, *ante*, p. 1785.

(*y*) This offence is complete though the vote is not got in. "Procuring" is complete if the person procured actually applies for a ballot paper, though he never gets it; and "counselling" is complete though the person counselled never even applies for a ballot paper. See *Hague* v. *Brown*, *ante*, p. 1785.

Appendix II. at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

Sections 86 to 89, both inclusive, of the Parliamentary Voters Registration Act, 1843 (*z*), shall apply to personation at an election of urban district councillors in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Act, but with the substitution of the words " any parochial elector or any agent appointed under the Urban District Councillors Election Order, 1898," for " any such agent so appointed as aforesaid " or for any reference to any such agent, and of " the presiding officer " for " the returning officer or his respective deputy."

EFFECT OF SCHEDULES.

28. The schedules to this Act, and the notes thereto, and directions therein shall be construed and have effect as part of this Act.

SCHEDULES TO ACT.

FIRST SCHEDULE TO ACT.

RULES FOR ELECTIONS OF URBAN DISTRICT COUNCILLORS.

The poll.

15. At every polling place the returning officer shall, subject to the provisions of the Urban District Councillors Election Order, 1898, provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret.

21. The presiding officer appointed to preside at each station shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respec-

(*z*) The effect of these sections as applied is as follows :

If at the time any person applies for a ballot paper after he has voted and before he leaves the polling station, any parochial elector or polling agent, of whose appointment proper notice has been given, declares to the presiding officer that he verily believes and undertakes to prove that the person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, the presiding officer must immediately after such person has voted, by word of mouth order any constable to arrest him, and the order is sufficient warrant for the constable to do so. But the presiding officer must, nevertheless, not refuse a ballot paper to anyone answering in the affirmative the questions permitted by law and taking the oath authorised and required of him, nor may the presiding officer refuse to allow the ballot paper of any such person to be put into the ballot box.

The constable must take the accused at the earliest convenient time before two justices for the place within which the voting has taken place. If two justices cannot be found, within three hours of the close of the poll, the constable must take him before one justice who must release him on bail to appear before two justices. If not even one justice can be found within four hours of the close of the poll, the prisoner must be discharged ; but he may in such case be subsequently re-arrested and the charge inquired into.

If on the hearing before two justices they are satisfied on the oath of two credible witnesses that the prisoner is guilty, they must commit him for trial. But if, on the contrary, they think the charge unfounded, they must make a written order on the elector or agent, at whose instance the prisoner was arrested, to pay him compensation, if he will accept it, to the amount of not more than £10 nor less than £5. The compensation so awarded may be levied by warrant of distress on the goods of the elector or agent, or of the candidate by whom the agent was employed. Acceptance of the compensation bars all further actions.

Appendix II.

tive nomination papers (*a*), and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names; it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll (*b*), shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector, together with the distinguishing mark, if any, of the part of the register in which the number occurs, shall, as required by section 2 of this Act, as adapted, be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark (*c*) his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box (*d*); he shall vote without any undue delay and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked shall be entered on a list, in this Act called " the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as " the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting (*e*).

27. If a person, representing himself to be a particular elector named on the register applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions permitted by the Urban District Councillors Election Order, 1898, to be asked of voters at the time of polling, and upon taking an oath in the form hereinafter set out, which the presiding officer shall administer, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer (*f*).

(*a*) If a candidate has been more than once validly nominated by different descriptions, his name should be entered only once in the nomination paper with both or all the descriptions as alternatives (*Northcote* v. *Pulsford* (1875), L. R. 10 C. P. 476; 39 J. P. 487).

(*b*) A spare box was only exhibited empty and sealed when it was required for use: held immaterial (*Pembroke Petition*, *ante*, p. 2319).

(*c*) Secretly. See s. 2, *ante*, p. 2317, and *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733; 39 J. P. 776.

(*d*) This must be done in the presence of the presiding officer, after having shown him the official mark on the back. See s. 2, *ante*, p. 2317, and HAWKINS, J., in *Ackers* v. *Howard* (1886), 16 Q. B. D. 739 at p. 752; 50 J. P. 519.

(*e*) The presiding officer must not put these declarations wrapped up with the ballot papers into the box, but he must put them aside and afterwards make them up together with the tendered votes list and the lists of votes marked by him in a sealed packet for the returning officer. See *Woodward* v. *Sarsons*, *supra*.

(*f*) The tendered vote will be added on a scrutiny, if it be proved that the person tendering it was entitled to vote (*Oldham* (1869), 1 O'M. & H. 152; *St. Andrews* (1886), 4 O'M. & H. 32), even though the presiding officer has omitted to endorse on it the name of the voter (*Stepney* (1886), 4 O'M. & H. 43), but it would not be counted if the person tendering the vote, instead of returning the ballot paper to the presiding officer to be endorsed, puts it into the ballot box (*Buckrose* (1886), 4 O'M. & H. 115).

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And the name of the voter and his number on the register shall be entered on a list, in this Act called "the tendered votes list."

The oath shall be administered in the following form:

"You do swear that you are the same person whose name appears as *A. B.* on the register of parochial electors for the parish of in this district [*or* on such part of the register of parochial electors for the parish of as relates to this ward], and that you have not already voted at the present election for this district [*add, in case of an election for a ward,* in this or any other ward].

"SO HELP YOU GOD."

Provided that any person entitled to affirm in lieu of taking an oath may affirm in the following form:

"I, *A. B.*, do solemnly, sincerely, and truly declare and affirm that I am the same person whose name appears as *A. B.* on the register of parochial electors for the parish of in this district [*or* on such part of the register of parochial electors for the parish of as relates to this ward], and that I have not already voted at the present election for this district [*add, in case of an election for a ward,* in this or any other ward]."

28. A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his seal,

(1) Each ballot box in use at his station, unopened but with the key attached; and
(2) The unused and spoilt ballot papers, placed together; and
(3) The tendered ballot papers; and
(4) The marked copies of the register of parochial electors, and the counterfoils of the ballot papers (*g*); and
(5) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver such packets to the returning officer, or deputy returning officer by whom the votes are to be counted, unless he is himself such officer.

30. The packets shall be accompanied by a statement made by such presiding officer showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting votes.

31. Each candidate may appoint an agent to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, the agents of the candidates, and any person to whom Rule 51 of this Schedule applies, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes (*h*).

34. If a poll has been taken as to the election of urban district councillors only, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and taking out the papers therein, shall count and record the number thereof, and then mix (*i*) together the whole of the ballot papers contained in the ballot boxes. If polls have been taken at the same date for the election both of urban district councillors and of guardians, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open one of the ballot boxes and taking out the papers therein shall separate those relating to the election of urban district councillors from any relating to the election of guardians, and shall count and record the number of ballot papers relating to each election. He shall

(*g*) Having regard to the difference in the provisions for the inspection of the marked register and of the counterfoils, it is better to seal them up in separate packets (*Stowe* v. *Jolliffe* (1874), L. R. 9 C. P. 446; 38 J. P. 617).

(*h*) Even the alteration of the wording of Rule 31 does not seem to oust the general right of a candidate to be present although he may have appointed an agent, and that agent is also present. See *Clementson* v. *Mason* (1875), L. R. 10 C. P. 209; 39 J. P. 360. The returning officer may order any person interrupting the proceedings by making a great noise or disturbance to be taken into custody and brought before a justice to give security for good behaviour (*Spilsbury* v. *Micklethwaite* (1808), 1 Taunt. 406).

(*i*) Failure to so mix them will not necessarily avoid the election (*Pembroke Petition*, *ante*, p. 2319).

then secure the ballot papers relating to each election by placing them in separate packets under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall proceed in like manner with any other ballot boxes and the papers therein. When all the ballot boxes and the papers therein have been so dealt with, he shall open all the packets of ballot papers relating to one election, and shall mix all such papers together, and shall proceed to count the votes, keeping the papers relating to any other election sealed up until he has completed such counting. He shall afterwards deal in manner aforesaid with the packets and papers relating to the other election or elections.

The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding, if and so far as he thinks it necessary, the hours between the close of the poll and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision (*k*). The returning officer shall draw up a statement showing the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty (*l*);

and shall on request allow any agents of the candidates to copy such statement. If the votes are counted by a deputy returning officer he shall, with the declaration of the result of the poll, report to the returning officer the number of ballot papers rejected and not counted by him, under the above heads, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall re-seal each sealed packet after examination. The returning officer shall draw up a statement as to the result of such verification, and shall, on request, allow all agents of the candidates to copy it.

If the votes are counted by a deputy returning officer, he shall report to the returning officer the result of the verification, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it. He shall with his report send to the returning officer the sealed packets of counted and rejected ballot papers, and the unopened sealed packets which he has received from any presiding officer.

38. Lastly, the returning officer shall carefully preserve for the period hereinafter mentioned all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the district for which such election was held.

39. The returning officer shall retain for six months all documents relating to an election of urban district councillors, and then, unless otherwise directed by an order of the county court having jurisdiction in the parish or in any part thereof, or of any tribunal in which the election is questioned, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the returning officer, except under the order of the county court or tribunal aforesaid, to be granted by such court or tribunal on being satisfied by evidence on oath that the

(*k*) Where the returning officer omitted to endorse rejected ballot papers, but merely put them aside, and after he had finished counting placed all the rejected ballot papers in one parcel and sealed it up and endorsed it "Rejected ballot papers," this was held not to avoid the election (*Woodward* v. *Sarsons*, *ante*, p. 2321).

(*l*) See *Pontardawe R. D. C. Election*, *ante*, p. 2308.

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inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the court or tribunal making the same may think expedient, and shall be obeyed by the returning officer (*m*).

41. No person shall, except by order of the county court having jurisdiction in the district or any part thereof, or of any tribunal having cognizance of any question relating to the election (*n*), open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the returning officer. Such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the court or tribunal making the order may think expedient: Provided that on making and carrying into effect any such order, care should be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid (*o*).

42. All documents in the custody of a returning officer in pursuance of this Act, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may have been or may hereafter be prescribed by the council of the county in which the district is situate, and the returning officer shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may have been or may hereafter be prescribed by the county council.

43. Where an order is made for the production by the returning officer of any document in his possession relating to any specified election of urban district councillors the production by such officer or his agent of the document ordered, in such manner as may be directed by such order, or by an order of the court having power to make such first-mentioned order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such returning officer or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

43A. There shall be an appeal from any order of the county court under these rules in like manner as in other cases in such court (*p*).

General provisions.

47. If the returning officer presides at any polling station, the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. The returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station, except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his, if appointed under Rule 31 of this Schedule, might have undertaken, and may, if he does not appoint such an agent (*q*), be present at the counting of the votes, or may himself take the place of such agent: Provided that any persons acting under this rule may, at any time before so acting, make the statutory declaration as to secrecy required by Rule 54 of this Schedule, but he shall not so act until he has made such declaration.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

(*m*) See *R.* v. *Beardsall* (1876), 1 Q. B. D. 452; 40 J. P. 583; *Macartney* v. *Corry* (1873), Ir. R. 7 C. L. 190.

(*n*) As to opening various packets under order of a court in connection with a charge of personation, see *R.* v. *Quinlan*, [1908] 2 I. R. 155.

(*o*) See *Stowe* v. *Jolliffe*, *ante*, p. 2322; *James* v. *Henderson* (1874), 43 L. J. C. P. 238.

(*p*) See County Courts Act, 1888, ss. 120—124, and Rules, Order 31.

(*q*) See *Clementson* v. *Mason*, *ante*, p. 2322.

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53. If any person appointed an agent for the purposes of attending a polling station, or at the counting of the votes dies, or becomes incapable of acting during the time of the election, another agent may be appointed in his place, and notice shall forthwith be given to the returning officer in writing of the name and address of any agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, and also every officer, clerk, or agent authorised to attend at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in any wise invalidate the act or thing done.

SECOND SCHEDULE TO ACT.

NOTE.—The forms contained in this Schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

FORM OF BALLOT PAPER.

Form of front of ballot paper.

ELECTION OF URBAN DISTRICT COUNCILLORS.

Counterfoil No.

NOTE.—*The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.*

1	CADE (John Cade, of 22, Wellclose Place, Accountant.)	
2	GIBSON (Henry Gibson, of 10, High Street, Oilman.)	
3	JOHNSON (Charles Johnson, of 7, Albion Street, Gentleman.)	
4	ROBINSON (Jane Ellen Robinson, of 12, Green Street, Grocer.)	
5	THOMPSON (William Henry Thompson, of 14, Queen Street, Silversmith.)	
6	WILSON (Robert Wilson, of 22, Hanover Square, Chemist.)	

Form of back of ballot paper.

No.

Election of urban district councillors for urban district [*or* ward of urban district].

19 .

NOTE.—The number on the ballot paper is to correspond with that on the counterfoil.

DIRECTIONS AS TO PRINTING BALLOT PAPER.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, and the names, places of abode, and descriptions and the number on the back of the paper, shall be printed in small characters.

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FORM OF DIRECTIONS FOR THE GUIDANCE OF THE VOTER IN VOTING, WHICH SHALL BE PRINTED IN CONSPICUOUS CHARACTERS, AND PLACARDED OUTSIDE EVERY POLLING STATION AND IN EVERY COMPARTMENT OF EVERY POLLING STATION.

The voter may vote for candidates as urban district councillors.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidates, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

NOTE.—These directions shall be illustrated by examples of the ballot paper.

FORM OF STATUTORY DECLARATION OF SECRECY.

I solemnly promise and declare, that I will not at this election of urban district councillors for the Urban District of [*or* Ward of the Urban District of], do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

NOTE.—The section must be read to the declarant by the person taking the declaration. One declaration may be made by the returning officer for all the wards for which he is returning officer.

FORM OF DECLARATION OF INABILITY TO READ.

I, *A. B.*, of , being numbered on the register of parochial electors for the parish of , do hereby declare that I am unable to read.

A. B., his mark.

day of , 19 .

I, the undersigned, being the presiding officer for the polling station for the Urban District of [*or* Ward of the Urban District of], do hereby certify that the above declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

Signed *C. D.*,

Presiding Officer for polling station for the Urban District of [*or* Ward of the Urban District of].

day of , 19 .

FOURTH SCHEDULE.

SECTIONS 74 AND 75 OF THE MUNICIPAL CORPORATIONS ACT, 1882, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF URBAN DISTRICT COUNCILLORS IN A DISTRICT OTHER THAN A BOROUGH.

Offences in relation to nomination papers.

74.—(1) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2) An attempt to commit any such offence shall be punishable as the offence is punishable.

Neglect of duty by returning officer or deputy

75.—(1) If a person who has undertaken to act as returning officer, or deputy returning officer, at an election of urban district councillors, neglects or refuses to conduct or declare

the election in manner provided by the Local Government Act, 1894, and the Urban District Councillors Election Order, 1898, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

returning officer.

(2) An action under this section shall not lie after three months from the neglect or refusal.

FIFTH SCHEDULE.

PROVISIONS OF THE MUNICIPAL CORPORATIONS ACT, 1882, WITH RESPECT TO THE ACCEPTANCE OF OFFICE, RESIGNATION, RE-ELIGIBILITY OF HOLDERS OF OFFICE, AND FILLING OF CASUAL VACANCIES, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF URBAN DISTRICT COUNCILLORS IN ANY DISTRICT OTHER THAN A BOROUGH.

Obligation to accept office or pay fine.

34.—(1) Every qualified person elected or deemed to be re-elected to the office of urban district councillor, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within one month after notice of being elected or deemed to be re-elected, or shall, in lieu thereof (*s*), be liable to pay to the district council a fine of such amount, not exceeding fifty pounds, as the district council by regulations determine.

(2) If there are no regulations determining fines, the fine shall be twenty pounds.

(3) The persons exempt under this section are—

Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, and any person who, having within five years before the day of election served the office of urban district councillor for the district or ward, claims exemption within ten days after notice of election or of being declared to be deemed to be re-elected.

(4) A fine payable under this section shall be recoverable summarily (*t*).

(5) If a person is either elected or deemed to be re-elected district councillor in more than one ward in the urban district for which the election is held, he shall not accept office in respect of more than one of such areas, and if he accepts office or pays the fine for non-acceptance of office in respect of one of such areas, he shall not be liable to a fine for non-acceptance of office in respect of any other of such areas.

(6) Any person who has been nominated and elected without his consent to his nomination being previously obtained shall not be liable to a fine under this section.

Declaration on acceptance of office.

35. A person elected or deemed to be re-elected to the office of urban district councillor shall not, until he has made and subscribed before two members of the district council or the clerk to the district council, or, if he is absent from the United Kingdom, before a British consul, a declaration in the following form, or in a form to the like effect, act in the office except in administering that declaration:

Form of Declaration on Acceptance of Office.

I, *A. B.*, having been elected [*or* being deemed to be re-elected] urban district councillor for the urban district of [in respect of the ward of the district], hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

Dated this day of , 19 .

This declaration was made and subscribed before us.*

Members of the district council { ———
of the above-named district. { ———

* If the declaration is made and subscribed before the clerk or a consul, adopt term accordingly.

Power to receive declaration.

239.—(1) Members of the district council or the clerk, or a British consul, shall have authority to receive the declaration required to be made by an urban district councillor without any commission or authority other than this Act.

(2) The declaration, if made before a British consul, shall be forthwith sent to the clerk to the district council.

Penalty on acting in office without making declaration.

41. If any person acts in the office of urban district councillor without having made the declaration by this Act required, he shall for each offence be liable to a fine not exceeding twenty pounds, recoverable by action (*u*).

Resignation of office.

36.—(1) A person elected as urban district councillor may at any time, by writing signed by him and delivered to the clerk to the urban district council, resign the office, on payment of the fine provided for non-acceptance thereof.

(2) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the district council,

(*s*) Thus relieving himself from the obligation to serve (*R.* v. *Bower* (1822), 1 B. & C. 585).

(*t*) See 42 & 43 Vict. c. 49, ss. 20, 51.

(*u*) By the Crown only (*Bradlaugh* v. *Clarke* (1882), 8 App. Cas. 354 ; 47 J. P. 405).

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and countersigned by the clerk, and fixed on the principal external gate or door of the offices of the district council, and the office shall thereupon become vacant (*x*).

Re-eligibility of office holders.

37. A person ceasing to hold the office of urban district councillor shall, unless disqualified to hold the office, be re-eligible.

Filling of casual vacancies.

40.—(1) On a casual vacancy in the office of urban district councillor, an election shall be held in accordance with the Urban District Councillors Election Order, 1898; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2) In case of more than one casual vacancy in the office of urban district councillor being filled at the same election, not being the ordinary election, the councillor elected by the smallest number of votes should be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the district council.

(3) Non-acceptance of office by a person elected or deemed to be re-elected creates a casual vacancy.

Time for filling casual vacancies.

66.—(1) On a casual vacancy in the office of urban district councillor, the election shall be held within one month after notice in writing of the vacancy has been given to the chairman of the district council or to the clerk by two councillors.

(3) The day of election shall be fixed by the clerk to the district council.

(4) Nothing in this Act shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election (*y*).

Given under the Seal of Office of the Local Government Board, dated this first day of January in the year one thousand eight hundred and ninety-eight.

(L.S.) HENRY CHAPLIN, *President.*

HUGH OWEN, *Secretary.*

ELECTION OF RURAL DISTRICT COUNCILLORS AND OF PARISH COUNCILLORS—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
January 1st, 1898.

SIR,—I am directed by the Local Government Board to state that they have had under consideration the rules for the election of rural district councillors.

The Board have hitherto in each year issued an Order under the powers conferred upon them by the Local Government Act, 1894, prescribing rules for the ordinary election of rural district councillors in that year. They think, however, that the time has now come when a permanent Order might be issued prescribing rules which shall apply to all elections of rural district councillors, and they have issued an Order accordingly. [Order No. 37,499. 2 copies.]

The new Order prescribes rules not only for the elections held in any year to fill any ordinary vacancies in the rural district councillors, but also for the first election of any additional rural district councillors, and for the first election of any councillors to be elected for any rural parish which may hereafter be constituted. The Order also prescribes rules for every election which may be held to fill a casual vacancy in the office of rural district councillor, and, except as regards any election the proceedings in respect of which have been already commenced, the Rural District Councillors (Additional Councillors) Election Order, 1895, and the Rural District Councillors Casual Vacancies Election Order, 1895, are rescinded. [Order No. 37,500. 2 copies.]

(*x*) See *Pease* v. *Lowden*, [1899] 1 Q. B. 386.

(*y*) In 1896 the law officers advised that s. 48 (4) (b) of the L. G. A., 1894 (here reproduced), applies only where the person whose retirement, death, etc., has caused the casual vacancy would himself have gone out of office in the ordinary course of events within six months (60 J. P. 800).

Under rule 1 of the Order, you will be the returning officer for the purposes of any election held under it, unless you are unable or unwilling to act. If such should be the case as regards any ordinary election to be held in the district in the present year, the rural district council should, as early as practicable, appoint some other person to act, but the same person must in all cases be the returning officer at the election of the rural district councillors and of any parish councillors to be elected at the same time in the parish. Appendix II.

By rules 5 and 23 (3) of the Order duties are imposed on the overseers of any parish for which an election is held. When sending to the overseers forms of nomination paper and the copies of the notice referred to in rule 23 (3), you should draw their attention to the duties which devolve upon them in relation to these matters.

The Board may refer to the tables in the first schedule to the Order, in which the times for the proceedings at any election of rural district councillors are prescribed or defined. As regards any ordinary election to be held this year, the times for the proceedings will be as follows :—

1. Notice of Election	Not later than Friday, the 11th of March.
2. Receipt of Nomination Papers .	Not later than 12 o'clock at noon on Thursday, the 17th of March.
3. Sending Notice of Decision as to Validity of Nomination Papers.	Not later than Friday, the 18th of March.
4. Making out Statement as to persons nominated.	Not later than Saturday, the 19th of March.
5. Withdrawal of candidates . .	Not later than 12 o'clock at noon on Tuesday, the 22nd of March.
6. Notice of Poll	Five clear days at least before the day of Election.
7. Day of Election	Monday, the 4th of April, or such other day not being earlier than Saturday, the 2nd of April, or later than Wednesday, the 6th of April, as may for special reasons be fixed by the county council.

The Board have also issued a permanent Order prescribing rules for the annual elections of parish councillors. Under rule 20 of the Order, you, as clerk to the rural district council, will be the returning officer for the purposes of the election in any parish in the district for which parish councillors are to be elected, unless you are unable or unwilling to act. If such should be the case as regards any ordinary election to be held in the present year, the rural district council should, as early as practicable, appoint some other person to act, but the same person must, as already pointed out, in all cases be the returning officer at the election of the parish councillors and of any rural district councillors to be elected at the same time in any parish.

You should at the earliest date practicable give notice to the clerk to the parish council, or if there is no such clerk to the overseers of the parish, as to whether you will yourself act as returning officer, or whether some other person has been appointed to act, and if so, as to his name and address.

As regards the dates for the several proceedings in connection with a poll at any annual election of parish councillors, the Board may draw attention to the First Schedule to the Parish Councillors Election Order. In the present year the latest time for the withdrawal of candidates after the parish meeting will be 12 o'clock at noon on Tuesday, the 22nd of March, and the day of the poll will be Monday, the 4th of April, or such other day not being earlier than Saturday, the 2nd of April, or later than Wednesday, the 6th of April, as may for special reasons be fixed by the county council.

Two copies of the Order as to the election of rural district councillors and also of that as to the election of parish councillors are enclosed, and the Board request that if you do not intend to act as returning officer, you will send them, together with this letter, to the person appointed in your place. The Orders will be placed on sale, so that further copies may, if required, be purchased from Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C., either directly or through any bookseller.

I am directed to add that by the Expiring Laws Continuance Act, 1897, the Local Government Elections Act, 1896, has been continued in force until the 31st of December, 1898. Hence if any difficulty arises during the present

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I am, Sir, your obedient servant,

HUGH OWEN, *Secretary.*

The Clerk to the Rural District Council.

RURAL DISTRICT COUNCILLORS—GENERAL ORDER. RULES AS TO NOMINATION AND ELECTION.

(January 1st, 1898.)

TO THE COUNTY COUNCIL of every administrative county in England and Wales, except the administrative county of London; To the Rural District Council of every rural district in England and Wales; To the Clerk to every such Rural District Council as aforesaid; And to all others whom it may concern.

WHEREAS [*recites sections* 20, 24, 48, *of the L. G. A.*, 1894].

And whereas by the Rural District Councillors (Additional Councillors) Election Order, 1895, and the Rural District Councillors Casual Vacancies Election Order, 1895, we prescribed rules for the first election of any additional rural district councillors for any rural parish in England and Wales, and the first election of a rural district councillor or councillors to be appointed for any rural parish which might thereafter be constituted, and for every election to be held to fill a casual vacancy in the office of rural district councillor in any rural parish in England and Wales:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do hereby rescind the said Rural District Councillors (Additional Councillors) Election Order, 1895, and the said Rural District Councillors Casual Vacancies Election Order, 1895, except as regards any election the proceedings in respect of which have been already commenced;

And we do hereby order that, subject to any directions which may be given by us, and until we otherwise order, the following rules shall apply to, and shall be observed in connexion with, elections of rural district councillors as hereinafter set forth; that is to say,—

(a) the election held in any year to fill any ordinary vacancies in the rural district councillors for any rural parish in England and Wales;

(b) the first election of any additional rural district councillors for any rural parish or parishes in England and Wales, and the first election of a rural district councillor or councillors to be elected for any such rural parish which may hereafter be constituted; and

(c) every election which may be held to fill a casual vacancy in the office of rural district councillor in any rural parish in England and Wales.

Returning officer.

1.—(1) The clerk to the rural district council of the rural district in which the parish is situate or with which it is co-extensive shall be the returning officer, or if there is more than one such clerk, then the person who acts as such clerk for the purpose of the Public Health Act, 1875 (*z*).

(2) If the clerk is unwilling to act as returning officer, or if the office of clerk is vacant at the time when any duty relative to the election has to be performed by the returning officer, or if the clerk from illness or other sufficient cause is unable to perform such duty, the rural district council shall appoint some other person to act as returning officer or to perform such other duties of the returning officer as then remain to be performed as the case may be,

(*z*) See s. 190 of that Act, *ante*, p. 452.

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but the same person shall in all cases be the returning officer at the election of the rural district councillors and of any parish councillors to be elected at the same date in the parish.

(3) The returning officer shall appoint some place within the union or rural district in which the parish is situate as an office for the purpose of the election.

(4) The returning officer may, in writing, appoint a fit person to be his deputy for all or any of the purposes relating to the election of rural district councillors, and shall appoint such a deputy in the case and for the purposes mentioned in Rule 19 of this Order. A deputy returning officer shall have all the powers, duties, and liabilities of the returning officer in relation to the matters in respect of which he is appointed as deputy.

(5) The same person shall act as deputy returning officer in respect of the election both of rural district councillors and of any parish councillors to be elected at the same date in the parish.

Day of election.

2.—(1) The day of the election of rural district councillors in the parish shall be that prescribed or defined for the purpose by the First Schedule to this Order.

(2) Provided that the day of election of rural district councillors in the parish and the day of the poll for the election of any parish councillors to be elected at the same date in the parish shall be the same.

Notice of election.

3. Not later than the day prescribed for that purpose by the First Schedule to this Order, the returning officer shall prepare and sign a notice of the election of rural district councillors in the parish or parishes in which the election is to be held, and shall cause notice to be given of the same in accordance with Rule 31 of this Order in each such parish. The notice shall be in the Form No. 1 in the Second Schedule to this Order, or in a form to the like effect (*a*).

Nomination of candidates.

4. (1) Each candidate for election as a rural district councillor shall be nominated in writing.

(2) The nomination paper shall state the name of the parish or other area (*b*) for which the candidate is nominated, the surname and other name or names in full of the candidate (*c*), and his place of abode (*d*), and description (*e*), and whether he is qualified as a parochial elector of some parish within the poor law union in which the rural district or the part of the rural district containing the parish or other area is comprised, or by having during the whole of the twelve months preceding the election resided in the union, or by being qualified to be a councillor for a borough wholly or partly situate within the union. It shall be signed (*f*) by two parochial electors of the parish or other area, as proposer and seconder, and no more, and shall state their respective places of abode. It shall be in the form set out in the notice in the Form No. 1 in the Second Schedule to this Order, or in a form to the like effect.

(3) The name of more than one candidate shall not be inserted in any one nomination paper.

(4) A parochial elector shall not sign more nomination papers than there are rural district councillors to be elected for the parish or other area in the rural district for which the election is to be held. He shall not sign a nomination paper for any parish or other area unless he is registered as a parochial elector in respect of a qualification therein. Neither shall he sign nomination papers for more than one parish or other area in the rural district (*g*).

(5) If any parochial elector shall sign nomination papers for more than one parish or other area in the rural district or shall sign a larger number of nomination papers than the number of rural district councillors to be elected for the parish or other area, such of the nomination papers signed by him as relate to the first parish or other area for which a nomination paper signed by him is received by the returning officer shall alone be valid, and of the nomination papers signed by him which relate to that parish or other area such as are first received by the returning officer up to the number of rural district councillors to be so elected shall alone be valid (*h*). Provided that for the

(*a*) See note (*i*), *ante*, p. 2303.
(*b*) See note (*k*), *ante*, p. 2303.
(*c*) See note (*l*), *ante*, p. 2303.
(*d*) See note (*m*), *ante*, p. 2303.
(*e*) See note (*n*), *ante*, p. 2303.
(*f*) See note (*o*), *ante*, p. 2303.
(*g*) See note (*q*), *ante*, p. 2304.
(*h*) See note (*r*), *ante*, p. 2304.

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purposes of this paragraph nomination papers not properly filled up and signed shall be excluded (*i*).

Nomination papers to be provided.

5. The returning officer shall provide nomination papers, and shall furnish the overseers of the parish with a supply thereof. Any parochial elector may obtain nomination papers from either the returning officer or the overseers free of charge.

Time for sending in nomination papers.

6. Every nomination paper shall be sent (*k*) to the returning officer so that it shall be received at his office within the time prescribed for that purpose by the First Schedule of this Order. A nomination paper received after that time shall not be valid. The returning officer shall note on each nomination paper whether it was received before or after that time.

Dealing with nominations by the returning officer.

7.—(1) The returning officer shall number the nomination papers in the order in which they are received by him; and the first valid nomination paper received for a candidate shall be deemed to be the nomination of that candidate.

(2) The returning officer shall, as soon as practicable after the receipt of any nomination paper, examine and decide whether it has or has not been properly filled up and signed by two parochial electors of the parish or other area, and whether it is or is not invalid under Rule 4 (5) or Rule 6 (*l*). His decision that a nomination paper has been so filled up and signed, and is not invalid as aforesaid, shall be final, and shall not be questioned in any proceeding whatever.

(3) If the returning officer shall decide that a nomination paper is invalid, he shall put a note on it to this effect, stating the grounds of his decision, and he shall sign such note (*m*).

(4) After deciding that the nomination of any candidate is valid, or (except where a nomination of any candidate has been decided to be valid) that a nomination paper for the candidate is invalid, the returning officer shall, not later than the day prescribed for that purpose by the First Schedule to this Order, send, by post, or otherwise, notice of his decision to the candidate.

Statement as to persons nominated.

8. Not later than the day prescribed for that purpose by the First Schedule to this Order, the returning officer shall make out a statement in the Form No. 2 in the Second Schedule to this Order, or in a form to the like effect, containing the names, places of abode, and descriptions of the persons nominated as rural district councillors for the parish or the several parishes for which the election is to be held, and also containing a notice of his decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not. He shall forthwith cause a copy thereof to be suspended in the board room of the guardians of the poor law union in which any of these parishes are situate, and another to be affixed on the principal external gate or door of every workhouse of such union, and, if the board room of the guardians is not situate at any such workhouse, on the external gate or door of the building in which the board room is comprised.

Withdrawal of candidate.

9. Any candidate may withdraw his candidature by delivering or causing to be delivered at the office of the returning officer, within the time prescribed for that purpose by the First Schedule to this Order, a notice in writing of such withdrawal, signed by him (*n*).

Relation of nomination to election.

10. Section 56 of the Municipal Corporations Act, 1882, shall be altered and adapted in its application to the election of rural district councillors in the parish so as to provide as follows:

(1) If the number of candidates who receive valid (*o*) nominations and who do not withdraw their candidature under Rule 9 exceeds that of the persons to be elected as rural district councillors, the councillors shall be elected from amongst the persons nominated.

(2) If the number of valid nominations does not exceed the number of rural district councillors to be elected, or if, by the withdrawal of any candidate as provided by Rule 9, the number of candidates for the parish is reduced to a number not exceeding the number to be elected, or if this number of candidates is otherwise (*p*) so reduced, the returning

(*i*) See note (*s*), *ante*, p. 2304.
(*k*) See note (*t*), *ante*, p. 2304.
(*l*) See note (*u*), *ante*, p. 2304.
(*m*) See note (*x*), *ante*, p. 2304.
(*n*) See note (*z*), *ante*, p. 2305.
(*o*) See note (*a*), *ante*, p. 2305.
(*p*) See note (*c*), *ante*, p. 2305.

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officer shall, as early as practicable, give public notice in the parish in accordance with Rule 31 of this Order to the effect that no poll will be taken, and that the candidates, or the remaining candidates, as the case may be, will be declared to be elected ; and also, in the case of the ordinary election, if the number of such candidates is less than the number of rural district councillors to be elected, that such of any retiring councillors for the parish as were highest on the poll at their election, or, if the poll was equal or there was no poll, as shall have been selected for that purpose by the returning officer by lot to make up the required number, will be declared to be deemed to be re-elected.

(3) If there is no valid nomination, the returning officer shall, as early as practicable, give public notice in the parish in accordance with Rule 31 of this Order that no poll will be taken, and, in the case of the ordinary election, that the retiring councillors will be declared to be deemed to be re-elected.

(4) The returning officer shall forthwith send, by post or otherwise, a copy of any notice under this rule to each of the persons who will be declared to be elected, or to be deemed to be re-elected.

(5) This notice shall be in the Form No. 3 or the Form No. 4, as the case may be, in the Second Schedule to this Order, or in a form to the like effect.

Day and hours of poll.

11.—(1) The poll, if any, shall be held on the day of election as prescribed or defined by the First Schedule to this Order, and the hours during which the poll shall be open shall be such as shall be fixed by the county council by any general or special order, or if no such order is in force in the parish, then such hours as were applicable at the last ordinary election of parish councillors or rural district councillors in the parish, so, however, that the poll shall always be open between the hours of six and eight in the evening.

(2) Provided that the hours during which any poll shall be open for the election of rural district councillors and of any parish councillors for the parish shall be the same.

Polling districts.

12.—(1) (a) If the parish is divided into polling districts for the election of county councillors or of parish councillors, the whole of each such district being comprised in the parish, and the lists of parochial electors are made out in separate parts for such districts, each district shall be a polling district for the election of rural district councillors.

(b) If the parish is not so divided, but is divided into wards for the election of parish councillors, each ward shall be a polling district for the election of rural district councillors.

(c) If neither paragraph (a) nor paragraph (b) of this rule applies to the parish the returning officer may, if he thinks fit, divide the parish into polling districts for the election of rural district councillors, but each district shall consist of an area for which a separate list of parochial electors will be available: Provided that the parish shall not be divided into polling districts, if the population thereof, according to the census last published, is not three hundred or upwards.

(d) The polling districts for the election of rural district councillors and of any parish councillors to be elected at the same date in the parish shall be the same.

(2) If the parish is divided into polling districts, each parochial elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate.

Polling places and stations.

13. The returning officer shall determine the number and situation of the polling places and polling stations.

Provided as follows:

(a) No premises licensed for the sale of intoxicating liquor shall be used for a polling station ;

(b) The same polling stations shall be used for the election of rural district

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councillors and of any parish councillors to be elected at the same date in the parish ;

(c) Where the number of parochial electors in the parish, or (if the parish is divided into polling districts) in any polling district, is not more than five hundred, only one polling station shall, unless the county council otherwise direct, be provided for the parish or polling district ; and so on for each additional five hundred parochial electors or for any less number of parochial electors over and above the last five hundred.

Notice of poll.

14.—(1) If a poll has to be taken, the returning officer shall, within the time prescribed for that purpose by the First Schedule to this Order, give public notice thereof in accordance with Rule 31 of this Order. The notice shall specify—

(a) the day and hours fixed for the poll ;
(b) the number of rural district councillors to be elected for the parish ;
(c) the names, place of abode, and description of each candidate for the parish whom he has decided to have been nominated by a valid nomination paper, and who has not withdrawn his candidature ;
(d) the names of the proposer and seconder who signed the nomination paper of each candidate ;
(e) a description of the polling districts, if any ; and
(f) the situation and allotment of the polling places and polling stations (*q*), and the description of the persons entitled to vote thereat.

(2) The notice shall be in the Form No. 5 in the Second Schedule to this Order, or in a form to the like effect.

(3) If polls are to be taken in the parish as to the election of both rural district councillors and parish councillors, the returning officer may, if he thinks fit, give one notice only for both polls, and such notice shall be in the Form No. 6 in the Second Schedule to this Order, or in a form to the like effect.

Presiding officers.

15. The returning officer, or some person appointed by him for the purpose, shall preside at each polling station. The person presiding at any polling station shall be called the presiding officer.

Provided as follows :

(a) At any polling station the same person shall act as presiding officer for the election of rural district councillors and of any parish councillors to be elected at the same date in the parish.
(b) In making appointments under this rule the returning officer shall, as far as practicable, secure the services of suitable persons resident in the parish, so as to diminish expense.

Compartments of polling stations. Ballot papers.

16. The returning officer shall furnish every polling station with a sufficient number of compartments in which the voters can mark their votes screened from observation, and shall furnish each presiding officer with such number of ballot papers as may be necessary for effectually taking the poll at the election.

Polling agents.

17. If there are only two candidates, each of them may, in writing, appoint a polling agent for each polling station, who may be paid or unpaid. If there are more than two candidates, any number of them, being not less than one-third of the whole number of candidates, may, in writing, appoint one polling agent for each polling station, who may be paid or unpaid. Any such appointment shall be delivered at the office of the returning officer not less than two clear days before the day of the poll. Except as aforesaid, no polling agent, whether paid or unpaid, shall be appointed for the purposes of the election.

Prohibition of voting in more than one parish. Questions to elector.

18.—(1) An elector shall not vote in more than one parish in the district.

(2) The presiding officer may, and if required by any parochial elector of the parish, or any polling agent appointed under Rule 17, shall, put to any elector at the time of his applying for a ballot paper, but not afterwards, the following questions, or one of them and no other :

(a) Are you the person entered in the parochial register for this parish [*or* ward] as follows [*read the whole entry from the register*] ?
(b) Have you already voted at the present election of rural district councillors in this or any other parish or ward in the rural district of ?

(*q*) See note (*e*), *ante*, p. 2307.

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(3) A person required to answer either of these questions shall not receive a ballot paper or be permitted to vote until he has answered it (*r*).

Counting the votes.

19.—(1) The returning officer, when he does not act as presiding officer at any polling station for the parish, shall appoint the presiding officer or some one of the presiding officers to act as deputy returning officer for the parish, as regards the custody and opening of the ballot boxes, the counting and recording of the votes, and the declaration of the number of votes given for each candidate and of the election of the candidate or candidates to whom the largest number of votes has been given. The person so appointed shall, in addition to his other powers and duties, have all the powers and duties of the returning officer in relation to the decision of any question as to any ballot paper and otherwise as to the ballot papers. Provided that, if the parish is divided into wards for the election either of rural district councillors or of parish councillors, but not for both elections, or, if the parish is so divided for both elections, and the wards are not the same for both elections, one deputy returning officer shall act under this rule for the whole of the parish.

(2) The same person shall act as deputy returning officer in respect of the election both of rural district councillors and of any parish councillors to be elected at the same date for the parish.

(3) The votes shall be counted in the parish or in some place near thereto as soon as practicable after the close of the poll.

Equality of votes.

20. If any equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer or deputy returning officer, as the case may be, may, if a parochial elector of the parish, give such additional vote in writing, but shall not otherwise be entitled to vote at the election (*s*). If in such a case the returning officer or deputy returning officer, as the case may be, is not a parochial elector of the parish or is unwilling to vote, he shall determine by lot which of the candidates whose votes are equal shall be elected (*t*).

Who to be deemed to fill casual vacancies at ordinary election.

21. In the event of one or more casual vacancies being filled at an ordinary election, where there is a poll, the person elected by the fewest votes shall be deemed elected to fill such vacancies. Should there be an equality of votes between such persons, the rural district council shall determine by ballot which of such persons shall be deemed elected to fill the casual vacancy. If the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the fewest votes, or if the votes were equal the person selected by the rural district council by ballot from the persons so elected shall hold office for the shorter period. Where there is no poll the person or persons to be deemed to be elected to fill the casual vacancy or vacancies shall be determined by the rural district council by ballot.

Declaration of result of poll.

22.—(1) The declaration of the result of the poll shall be in the form No. 7 in the Second Schedule to this Order, or in a form to the like effect.

(2) The returning officer or deputy returning officer, as the case may be, making the declaration shall forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted. If the declaration is made by a deputy returning officer, he shall forthwith send it to the returning officer.

Publication of result of elections.

23.—(1) The returning officer shall prepare and sign in duplicate a notice (*u*) of the result of the elections in all the parishes in the district for which elections are held, and shall by such notice declare to be elected or to be deemed to be re-elected the persons who, under Rule 10, are to be declared to be elected or to be deemed to be re-elected without a poll being taken. The notice shall be in the form No. 8 in the Second Schedule to this Order, or in a form to the like effect.

(2) One of these notices shall be sent by the returning officer, as early as practicable, to the clerk of the rural district council, and the other to the clerk to the guardians of the union comprising the rural district or the part of the rural district; and copies of the notice shall be sent by the returning officer to the persons elected or deemed to be re-elected.

(*r*) See note (*g*), *ante*, p. 2308.
(*s*) See note (*i*), *ante*, p. 2308.
(*t*) See note (*k*), *ante*, p. 2308.
(*u*) See note (*l*), *ante*, p. 2309.

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(3) The returning officer shall also send a sufficient number of copies of the notice to the overseers of all the parishes in the rural district for which elections are held, and the overseers of every such parish shall cause public notice to be given thereof in accordance with Rule 31 of this Order.

Application and adaptation of Ballot Act, 1872.

24. The provisions of the Ballot Act, 1872, which, with adaptations and alterations, are set out in the Third Schedule to this Order, and only such provisions of that Act, shall, subject to such adaptations and alterations, apply to the election of rural district councillors in like manner as in the case of a municipal election.

Provided as follows:

(a) Such application shall be subject to the provisions of this Order.

(b) If an election of rural district councillors and of any parish councillors is held in the parish at the same date, one ballot box may, if the returning officer thinks fit, be used for the two elections; but, if separate ballot boxes are used for the two elections respectively, no vote for any rural district councillor shall be rendered invalid by the ballot paper being placed in the box intended for the reception of ballot papers for parish councillors.

(c) The ballot papers used at the election of rural district councillors for the parish shall be of a different colour from that of any ballot papers used in the election of parish councillors held in the parish at the same date.

Adaptation of Municipal Corporations Act, 1882.

25.—(1) The provisions of sections 74 and 75 of the Municipal Corporations Act, 1882, which, with adaptations and alterations, are set out in the Fourth Schedule to this Order, and such of the provisions of that Act as relate to the acceptance of office, re-eligibility of holders of office, and filling of casual vacancies, and are, with adaptations and alterations, set out in the Fifth Schedule to this Order, shall, subject to such adaptations and alterations, apply to the election of rural district councillors and to the persons elected or deemed to be re-elected thereat.

(2) In the application of Part IV. of the Municipal Corporations Act, 1882 (relating to corrupt practices and election petitions) (*x*), as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*y*), the following adaptations and alterations shall have effect:

(a) Such applications shall be subject to the provisions of this Order.

(b) References to the election of rural district councillors shall be substituted for references to a municipal election or to an election to a corporate body. "Parish or united parishes," and in section 93 (2) "poor law union" shall be substituted for "borough," "poor rate of the parish or poor rates of the united parishes" shall be substituted for "borough fund or borough rate," the "returning officer" shall be substituted for the "town clerk," and "voter" shall mean "a parochial elector, or a person who votes or claims to vote at an election of rural district councillors."

(c) In the application of sub-section (2) of section 89, such sub-section shall be adapted and altered so as to read as follows:

"(2) The security shall be to the amount of fifty pounds, unless in any case the High Court or a judge thereof, on summons, order that the same shall be to a lesser amount, or to a larger amount not exceeding three hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other.

Adaptation of Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

26. In the application of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*y*), the following adaptations and alterations shall have effect:

(1) Such application shall be subject to the provisions of this Order.

(2) The expressions "parish or united parishes," "returning officer of rural district councillors," and "poor rate of the parish or poor rates of the united parishes" shall be deemed to be substituted in the Act for "borough," "town clerk," and "borough fund or rate," respectively.

(*x*) *Ante*, p. 1708. (*y*) *Ante*, p. 1764.

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(3) The expression "corporate office" in the Act shall mean "the office of rural district councillor," and "a municipal election" shall mean "an election of one or more rural district councillors"; and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(4) So much of section 13 of the Act as permits one polling agent to be employed in each polling station shall not apply, except so far as the employment of polling agents is permitted by Rule 17 of this Order.

(5) An election petition complaining of the election on the ground of an illegal practice may be presented at any time within six weeks after the day of election.

(6) A petition relating to the election of a rural district councillor for a parish may be tried at any place within the poor law union in which the parish is situate.

(7) Nothing in the Act shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to the office of rural district councillor on any licensed or other premises not situate in an urban district or in the administrative county of London.

(8) In section 34 of the Act "burgess roll" shall mean "register of parochial electors."

(9) Section 37 of the Act shall be read as if a reference to an election of rural district councillors was substituted for a reference to any of the elections mentioned in the First Schedule to the Act.

Expenses.

27.—(1) Any sum which may be payable to the returning officer in respect of his services in taking a poll in the parish, or in respect of expenses incurred in relation to such poll, shall be defrayed by the rural district council of the district, and shall be charged to the parish in their accounts and shall be raised in like manner as any sums payable by the parish in respect of the general expenses of the rural district council.

(2) Any other sum which may be payable to the returning officer in respect of his services in the conduct of the election, or in respect of expenses incurred in relation to the election, shall be defrayed by the rural district council of the district, and shall be charged in their accounts as follows:

(a) If the election is the ordinary election, as general expenses;

(b) In the case of an election under this Order not held at the time of the ordinary election, to the parish; in which case any such sum shall be raised in like manner as any sums payable by the parish in respect of the general expenses of the rural district council: Provided that where any such sum shall be payable in respect of two or more parishes, the same shall be apportioned between them according to the number of parochial electors registered in such parishes respectively.

(3) If a poll for the election of rural district councillors and of any parish councillors is taken at the same date in the parish, one half of any expenses which may be payable in respect of the two polls jointly, including the remuneration of any officers employed in the conduct thereof, shall be deemed to have been incurred in relation to the poll for the election of rural district councillors, and shall be defrayed accordingly.

If parish in more than one county.

28. If the parish is situate in more than one administrative county, it shall for the purposes of this Order be deemed to be wholly situate in the county which, according to the census last published, contains the larger part of its population.

Wards.

29. If the parish is divided into wards for the election of rural district councillors, the rules in this Order shall, except as otherwise provided, apply to each of such wards as if it were a parish.

Provided as follows:

(a) If the parish is so divided, an elector shall not be permitted to vote in more than one ward.

(b) Any sum which in pursuance of this rule and of Rule 27 would be charged to any ward shall be charged to the parish in which the ward is situate and shall be raised accordingly.

United parishes.

30.—(1) If the parish is united with any other parish for the election of rural district councillors the rules in this Order shall, subject as hereinafter mentioned, apply as if such parishes formed the parish.

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(2) The questions which under Rule 18 the presiding officer may, and if required by any parochial elector, or any polling agent appointed under Rule 17, shall, put to any elector shall be as follows:

(a) Are you the person entered in the parochial register for one of the united parishes, viz., the parish of as follows [*read the whole entry from the register*]?

(b) Have you already voted at the present election of rural district councillors in either of the united parishes of and , or in any other parish or ward in the rural district of ?

(3) Any sum which in pursuance of this rule and of Rule 27 would be charged to the united parishes shall be divided between them in proportion to the number of parochial electors registered in such parishes respectively, and shall be raised accordingly.

Publication of notices.

31. Any public notice required by this Order shall be given by posting the same on or near the principal door of each church and chapel in the parish, and in some conspicuous place or places within the parish.

Mark instead of signature.

32. In place of any signature required by this Order, it shall be sufficient for the signatory to affix his mark, if the same is witnessed by two parochial electors.

Misnomer. Inaccurate descriptions.

33. No misnomer or inaccurate description of any person or place named in any notice or nomination paper under this Order shall hinder the full operation of such notice or paper with respect to that person or place, provided the description of that person or place is such as to be commonly understood.

Definition of "rural parish" and "ordinary election."

34. In this Order the expression "rural parish" means a parish situate in a rural district; and the expression "ordinary election" means the election held in any year to fill any ordinary vacancies in the rural district councillors for the district, and includes any first election of rural district councillors for the parish or election to fill a casual vacancy in the office of rural district councillor for the parish which can be held at the time of the election to fill such ordinary vacancies.

Adaptation of forms to elections other than the ordinary election.

35. If the election is not the ordinary election, such modifications as may be necessary shall be made in the forms contained in the Second Schedule to this Order.

This Order may be cited as the "Rural District Councillors Election Order, 1898."

FIRST SCHEDULE.

a.—TIMES FOR THE PROCEEDINGS AT THE ORDINARY ELECTION OF RURAL DISTRICT COUNCILLORS IN ANY YEAR.

Proceeding.	Time.
1. Notice of election	Not later than the second Friday in March, or, if the first Monday in April is Easter Monday, the first Friday in March.
2. Receipt of nomination papers . .	Not later than twelve o'clock at noon on the following Thursday.
3. Sending notice of decision as to validity of nomination papers	Not later than the following Friday.
4. Making out statement as to persons nominated.	Not later than the following Saturday.
5. Withdrawal of candidates . . .	Not later than twelve o'clock at noon on the following Tuesday.
6. Notice of poll	Five clear days at least before day of election.
7. Day of election	The first Monday in April, or, if that is Easter Monday, the last Monday in March; or, in either case, such other day not being earlier than the preceding Saturday, or later than the following Wednesday, as may for special reasons be fixed by the county council.

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b.—TIMES FOR THE PROCEEDINGS AT FIRST ELECTIONS OF RURAL DISTRICT COUNCILLORS, OR AT ELECTIONS TO FILL CASUAL VACANCIES, IF NOT HELD AT THE TIME OF THE ORDINARY ELECTIONS.

Proceeding.	Time.
1. Notice of election	Not later than fourteen days before the day of election.
2. Receipt of nomination papers . .	Not later than twelve o'clock at noon on the fourth day after the day on which the notice of election was given.
3. Sending notice of decision as to validity of nomination papers . . .	Not later than the day after the first day for the receipt of nomination papers.
4. Making out statement as to persons nominated	Not later than the day after the first day for the receipt of nomination papers.
5. Withdrawal of candidates . . .	Not later than twelve o'clock at noon on the fourth day after the last day for the receipt of nomination papers.
6. Notice of poll	Five clear days at least before day of election.
7. Day of election	In the case of first elections: Such day as may be fixed by the returning officer, but so that, subject to any special provision in the Order assigning any additional councillors or constituting the new parish, as the case may be, it shall not be later than six weeks from the date when such Order comes into operation. In the case of elections to fill casual vacancies: Such day as may be fixed by the clerk to the district council, in pursuance of section 66 of the Municipal Corporations Act, 1882, as altered and adapted by the Fifth Schedule to this Order.

SECOND SCHEDULE.

NOTE.—*If the election is not the ordinary election, such modifications as may be necessary should be made in the Forms in this Schedule* (*Rule* 35).

FORM No. 1.

NOTICE OF ELECTION.

RURAL DISTRICT OF .

ELECTION OF RURAL DISTRICT COUNCILLORS for the several parishes, united parishes and wards of parishes [*as the case may be*], hereinafter mentioned.

NOTICE IS HEREBY GIVEN THAT—

1.* The day of election of rural district councillors for the said parishes, united parishes and wards of parishes [*as the case may be*], will be , the day of 19 .

2. The number of rural district councillors to be elected for the said parishes, united parishes and wards [*as the case may be*], is as follows † :

3. Each candidate for election as a rural district councillor must be nominated in writing, and the nomination paper must be sent to me, so that it shall be received at (which is my office for the purpose of the election) not later than twelve o'clock at noon on , the day of , 19 .

4. A parochial elector must not sign more nomination papers than there are rural district councillors to be elected for the parish or united parishes or ward [*as the case may be*], and he must not sign a nomination paper for any parish or united parishes or ward unless he is registered as a parochial elector in respect of a quali-

* If the day of election is not the same for all the parishes, united parishes, and wards, adapt form accordingly.

† Insert here the names of the parishes, united parishes, and wards of parishes, with the number of rural district councillors to be elected for each. A tabular form may be used if preferred

Appendix II.

fication therein. Neither must he sign nomination papers for more than one parish or group of united parishes or ward in the rural district.

5. Forms of nomination paper may be obtained, free of charge, either from me at the above-named office, or from the overseers of the parish or either of the united parishes for which a nomination is proposed to be made.

6. The nomination paper must be in the following form, or in a form to the like effect :

FORM OF NOMINATION PAPER.

RURAL DISTRICT OF .

ELECTION OF RURAL DISTRICT COUNCILLORS for the Parish of [*or* for the United Parishes of , *or* for the Ward of the Parish of] in the year 19 .

We, the undersigned, being respectively parochial electors of the said parish [*or* united parishes *or* ward], do hereby nominate the under-mentioned person as a candidate at the said election.

Names of Candidate.		Place of Abode.	Description.	How qualified (specify qualification according to direction in Instruction 5).
Surname.	Other Names in Full.			
1.	2.	3.	4	5.

Signature of Proposer .
Place of abode .
Signature of Seconder
Place of abode .

*Instructions for Filling up Nomination Paper.**

* These instructions form part of the nomination paper.

(1) The surname of only one candidate for election must be inserted in column 1.

(2) The other names of the candidate must be inserted in full in column 2.

(3) Insert in column 3 the place of abode of the candidate.

(4) In column 4 state the occupation, if any, of the candidate. If the candidate has no occupation, insert some such description as "gentleman," or "married woman," or "spinster," or "widow," as the case may be.

(5) If the candidate is a parochial elector of some parish within the union in which the rural district or the part of the rural district comprising the parish is situate (that is, if his or her name is registered in the register of parochial electors of such parish) insert in column 5 "parochial elector of parish of ." If the candidate is not a parochial elector of some parish in that union, but he or she has, during the whole of the twelve months preceding the election, resided in the union, insert in column 5 "residence." If the candidate is not a parochial elector of some parish within the union, and has not during the whole of the twelve months preceding the election resided in the union, but he is qualified to be elected a councillor for some municipal borough wholly or partly situate in the union, insert in column 5 "Qualified to be elected councillor of borough of ." If the candidate has more than one of these qualifications, it will be sufficient to insert in column 5 one of his or her qualifications, but more may be inserted.

(6)—(i.) The paper must be signed by two parochial electors of the parish [*or* united parishes *or* ward], and no more; by one as proposer, and by the other as seconder. The places of abode of the proposer and seconder must also be inserted. Instead of signing, the proposer or seconder may affix his mark, if it is witnessed by two parochial electors.

(ii.) A parochial elector must not sign more nomination papers than there are rural district councillors to be elected for the parish [*or* united parishes or ward], and he must not sign a nomination paper for any parish [*or* united parishes *or* ward] unless he is registered as a parochial elector in respect of a qualification therein. Neither must he sign a nomination paper in more than one parish [*or* group of united parishes *or* ward] in the rural district.

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7. Not later than , the day of , 19 , I shall cause a copy of a statement containing the names, places of abode, and descriptions of the persons nominated for the office of rural district councillor for the said parishes, united parishes and wards, and also containing a notice of my decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not, to be suspended in the board room of the guardians of the union in which the said parishes, united parishes and wards are situate, and another to be affixed on the principal external gate or door of every workhouse of the union [and of the building in which the board room of the guardians is comprised].†

8. Any candidate nominated for election may, not later than twelve o'clock at noon on , the day of , 19 , withdraw his candidature by delivering or causing to be delivered at my office for the purposes of the election a notice in writing of such withdrawal signed by him.

9.‡If the number of candidates who are validly nominated for any parish, united parishes or ward, and whose candidature is not withdrawn, exceeds that of the persons to be elected, a poll will be taken on , the day of , 18 , of which due notice will be given.

Dated this day of 19 .

, Returning Officer.

Office for purpose of election.

† If the board room is at the workhouse omit these words.

‡ If the day of the election is not the same for all the parishes, united parishes, and wards, adapt form accordingly.

FORM No. 2.

RURAL DISTRICT OF .

The following is a statement as to the persons nominated for election as rural district councillors for the several parishes, united parishes and wards of parishes [*as the case may be*], in the above-named rural district for which an election is to be held in the year 18 .

Parishes [United Parishes and Wards].	Persons nominated.			Decision of Returning Officer that Candidate has not been nominated by a valid Nomination Paper.
	Names (Surnames first).	Places of Abode.	Descriptions.	
1.	2.	3.	4.	5.

The candidates opposite whose names no entry is made in column 5 have been validly nominated.

Dated this day of , 19 .

, Returning Officer.

Office for purpose of election.

FORM No. 3.

NOTICE THAT NO POLL WILL BE TAKEN.

RURAL DISTRICT OF .

PARISH OF [*or* Ward of the Parish of , *or* United Parishes of].

WHEREAS the following candidates have been duly nominated for election as rural district councillors for the said parish [*or* ward *or* united parishes]: [*Insert names, places of abode, and descriptions of candidates.*]

And whereas the number of those [*or* And whereas [*insert name or names*] has [*or* have] since withdrawn his [*or* their] candidature [*or if some other event has occurred causing a person to cease to be a candidate, state what it is*], and the number of the remaining] candidates is [equal to *or* less than] the number of persons, namely, to be elected as rural district councillors for the said parish [*or* ward *or* united parishes].

I do hereby give notice that a poll will not be taken, and that [*insert names*] will be declared elected as rural district councillors for the said parish [*or* ward *or* united parishes],* and also that [*insert names*] retiring rural district councillors for the said parish [*or* ward *or* united parishes], will be declared to be deemed to be re-elected.

Dated this day of , 18 .

, Returning Officer.

* If the number of candidates or remaining candidates is equal to the number to be elected, or if the election is a first election, or is to fill a casual vacancy, omit from * to the end of the sentence.

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FORM No. 4.

NOTICE WHERE NO CANDIDATES ARE NOMINATED.

RURAL DISTRICT OF .
PARISH OF [*or* Ward of the Parish of , *or* United Parishes of].

I do hereby give notice that no candidate has been duly nominated for election as a rural district councillor for the said parish [*or* ward *or* united parishes],* and that [*insert names*] the retiring rural district councillors for the said parish [*or* ward *or* united parishes] will be declared to be deemed to be re-elected.

Dated this day of , 19 .

, Returning Officer.

* If the election is a first election, or is to fill a casual vacancy, omit from * to the end of the sentence.

FORM No. 5.

NOTICE OF POLL.

[This form relates to a poll for the election of rural district councillors only.]

RURAL DISTRICT OF .
ELECTION OF RURAL DISTRICT COUNCILLORS in the year 19 .
PARISH OF [*or* Ward of the Parish of , *or* United Parishes of].

NOTICE IS HEREBY GIVEN—

1. That a poll for the election of rural district councillors for the above-named parish [*or* ward *or* united parishes] will be held on the day of , 19 , between the hours of and .
2. That the number of rural district councillors to be elected for the parish [*or* ward *or* united parishes] is
3. That the names in alphabetical order, places of abode, and descriptions of the candidates for election, and the names of their respective proposers and seconders are as follows :

Names of Candidate (Surname first).*	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* Insert particulars as to each candidate for the parish or ward or united parishes whose nomination is valid, and who has not withdrawn his candidature.

4.†—(1) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2) The polling districts are as follows :

5.‡ The situation and allotment of the polling places and polling stations and the description of the persons entitled to vote thereat are as follows :

6. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election will be [*insert colour*].

Dated this day of 19 .

, Returning Officer.

Office for purpose of election.

† If the parish or ward or united parishes are not divided into polling districts for the purposes of the election, paragraph 4 should be omitted.

‡ If only one polling place or station, adapt form accordingly.

FORM No. 6.

NOTICE OF POLL.

[This form relates to a poll for the election of parish councillors and rural district councillors for the same area.]

ELECTION OF PARISH AND RURAL DISTRICT COUNCILLORS for the parish of [or for the Ward of the Parish of] in the year 18 .

Appendix II.

NOTICE IS HEREBY GIVEN—

1. That polls for the election of parish and rural district councillors for the above named parish [*or* ward] will be held on , the day of , 19 , between the hours of and .
2. That the number of parish councillors to be elected for the parish [*or* ward] is .
3. That the number of rural district councillors to be elected for the parish [*or* ward] is .
4. That the names in alphabetical order, places of abode, and descriptions of the candidates for election, and the names of their respective proposers and seconders, are as follows :

AS PARISH COUNCILLORS.

Names of Candidate (Surname first).*	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* Insert particulars as to each candidate whose name was put to the parish meeting, and who has not withdrawn his candidature.

AS RURAL DISTRICT COUNCILLOR[S].

Names of Candidate (Surname first).*	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

5.†—(1) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2) The polling districts are as follows :

6.‡ The situation and allotment of the polling places and polling stations and the description of the persons entitled to vote thereat are as follows :

7. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election of parish councillors will be [*insert colour*], and in the election of rural district councillors will be [*insert colour*].

Dated this day of , 19 .

, Returning Officer.

Office for purpose of election.

† If the parish or ward is not divided into polling districts for the purposes of the election, paragraph 5 should be omitted.

‡ If only one polling place or station, adapt form accordingly.

FORM No. 7.

DECLARATION OF RESULT OF POLL.

RURAL DISTRICT OF .
ELECTION OF RURAL DISTRICT COUNCILLORS, in the year 19 .
PARISH OF [*or* Ward of the Parish of *or* United Parishes of].

I, the undersigned, being the returning officer [*or* deputy returning officer duly authorised in that behalf] at the poll for the election of rural district councillors for the said parish [*or* ward *or* united parishes] held on the day of , 19 , do hereby give notice that the number of votes recorded for each candidate at the election is as follows :

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Names of Candidates.		Places of abode.	No. of Votes recorded.
Surnames.	Other names.		

And I do hereby declare that the said are duly elected rural district councillors for the said parish [*or* ward *or* united parishes].

Dated this day of , 19 .

, Returning Officer
[*or* Deputy Returning Officer].

FORM No. 8.

NOTICE OF RESULT OF ELECTIONS.

RURAL DISTRICT OF .

ELECTION OF RURAL DISTRICT COUNCILLORS in the year 18 .

I, the undersigned, being the returning officer at the election of rural district councillors for the said district, do hereby give notice that the candidates whose names are entered in column 6 of the statement hereunder, opposite to the names of parishes, wards, and united parishes in which polls have been taken, have been declared duly elected rural district councillors; and I hereby declare that the persons whose names are entered in the said column [or in column 7]* opposite to the names of parishes, wards, and united parishes where no polls have been taken were duly elected [or are to be deemed to be re-elected]* rural district councillors for the same.

* If the election is a first election or is to fill a casual vacancy, omit these words and column 7.

Parishes, Wards, and United Parishes.	Names of Candidates.		Places of Abode.	Number of Votes recorded.	Names of Candidates elected.	Name of Retiring Councillors deemed to be re-elected.
	Surnames.	Other names.				
1.	2.	3.	4.	5.	6.	7.

Dated this day of , 19 .

, Returning Officer.

THIRD SCHEDULE.

PROVISIONS OF THE BALLOT ACT, 1872, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF RURAL DISTRICT COUNCILLORS.

PROCEDURE AT ELECTIONS OF RURAL DISTRICT COUNCILLORS.

Poll at elections.

2. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

Appendix II.

If in the register of parochial electors for a parish the same number is placed opposite to the name of more than one parochial elector, the returning officer shall put a distinguishing mark on each part of the register which contains numbers used in other parts of the register, and when the number of any voter on any part of the register is entered on the counterfoil of a ballot paper the mark on that part shall also be entered thereon.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

OFFENCES.

Offences in respect of ballot papers and ballot boxes.

3. Every person who—

(1) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

(2) Without due authority supplies any ballot paper to any person; or

(3) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(4) Fraudulently takes out of the polling station any ballot paper; or

(5) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election (*z*);

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Infringement of secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of parochial electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whatsoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour (*a*).

USE OF SCHOOL AND PUBLIC ROOM FOR POLL.

6. The returning officer at an election of rural district councillors may use, free of charge, for the purpose of taking the poll or for counting the votes at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room

(*z*) See note (*p*), *ante*, p. 2318.

(*a*) See note (*q*), *ante*, p. 2318.

Appendix II — the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to any such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll or for counting the votes as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

DUTIES OF RETURNING AND ELECTION OFFICERS.

General powers and duties of returning officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of parochial electors and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting the election.

Keeping of order in station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station (*b*).

Powers of presiding officer and administration of oaths, etc.

10. For the purpose of the adjournment of the poll a presiding officer shall have the power by law belonging to a deputy returning officer in a Parliamentary election; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Liability of officers for misconduct.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds (*c*).

No returning officer or officer appointed by him in connection with the election of rural district councillors for any rural district, nor any partner or clerk of any such officer, shall act as agent for any candidate in the management or conduct of his election as a rural district councillor. If any returning officer or officer appointed by him, or the partner or clerk of any such officer, shall so act he shall be guilty of a misdemeanor.

MISCELLANEOUS.

Prohibition of disclosure of vote.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Non-compliance with rules.

13. No election shall be declared invalid by reason of a defect in the title or appointment of the returning officer or deputy returning officer or of a non-compliance with the rules contained in the First Schedule to this Act or in the Rural District Councillors Election Order, 1898, or any mistake in the use of the forms in the Second Schedule to this Act or in the said Order, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act and of the Local Government Act, 1894, and that such non-compliance or mistake did not affect the result of the election (*d*).

PERSONATION.

Definition and punishment of personation.

24. The following enactments shall be made with respect to personation at an election of rural district councillors:

It shall be the duty of the returning officer to institute a prosecution (*e*) against any

(*b*) See note (*r*), *ante*, p. 2319.
(*c*) See note (*s*), *ante*, p. 2319.
(*d*) See note (*t*), *ante*, p. 2319.
(*e*) See note (*u*), *ante*, p. 2319.

person whom he may believe to have been guilty of personation (*f*) or of aiding, abetting, counselling or procuring the commission (*g*) of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony. **Appendix II.**

Sections 86 to 89, both inclusive, of the Parliamentary Voters Registration Act, 1843 (*h*), shall apply to personation at an election of rural district councillors in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Act, but with the substitution of the words "any parochial elector or any agent appointed under the Rural District Councillors Election Order, 1898," for "any such agent so appointed as aforesaid" or for any reference to any such agent, and of "the presiding officer" for "the returning officer or his respective deputy."

EFFECT OF SCHEDULES.

28. The schedules to this Act, and the notes thereto, and directions therein shall be construed and have effect as part of this Act.

SCHEDULES TO ACT.

FIRST SCHEDULE TO ACT.

RULES FOR ELECTIONS OF RURAL DISTRICT COUNCILLORS.

15. At every polling place the returning officer shall, subject to the provisions of the Rural District Councillors Election Order, 1898, provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient. The poll.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret.

21. The presiding officer appointed to preside at each station shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers (*i*), and arranged alphabetically in the order of their surnames and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll (*k*), shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector, together with the distinguishing mark, if any, of the part of the register in which the number occurs shall, as required by section 2 of this Act as adapted be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

(*f*) See note (*x*), *ante*, p. 2319.
(*g*) See note (*y*), *ante*, p. 2319.
(*h*) See note (*z*), *ante*, p. 2320.
(*i*) See note (*a*), *ante*, p. 2321.
(*k*) See note (*b*), *ante*, p. 2321.

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25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark (*l*) his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box (*m*); he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or on the application before sunset (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting (*n*).

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions permitted by the Rural District Councillors Election Order, 1898, to be asked of voters at the time of polling, and upon taking an oath in the form hereinafter set out, which the presiding officer shall administer, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer (*o*). And the name of the voter and his number on the register shall be entered on a list, in this Act called "the tendered votes list."

The oath shall be administered in the following form:

"You do swear that you are the same person whose name appears as *A. B.* on the register of parochial electors for the parish of [*or* ward of the parish of], and that you have not already voted at the present election of rural district councillors in this or any other parish or ward in the rural district.

"SO HELP YOU GOD."

Provided that any person entitled to affirm in lieu of taking an oath may affirm in the following form:

"I, *A. B.*, do solemnly, sincerely, and truly declare and affirm that I am the same person whose name appears as *A. B.* on the register of parochial electors for the parish of [*or* ward of the parish of], and that I have not already voted at the present election of rural district councillors in this or any other parish or ward in the rural district."

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his seal,

(1) Each ballot box in use at his station, unopened but with the key attached; and
(2) The unused and spoilt ballot papers, placed together; and
(3) The tendered ballot papers; and
(4) The marked copies of the register of parochial electors, and the counterfoils of the ballot papers (*p*); and
(5) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

(*l*) See note (*c*), *ante*, p. 2321.
(*m*) See note (*d*), *ante*, p. 2321.
(*n*) See note (*e*), *ante*, p. 2321.
(*o*) See note (*f*), *ante*, p. 2321.
(*p*) See note (*g*), *ante*, p. 2322.

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and shall deliver such packets to the returning officer, or deputy returning officer, by whom the votes are to be counted, unless he is himself such officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting votes.

31. Each candidate may appoint an agent to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, the agents of the candidates, any person to whom Rule 51 of this Schedule applies and no other person, except with the sanction of the returning officer, may be present at the counting of the votes (*q*).

34. If a poll has been taken as to the election of rural district councillors only, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and taking out the papers therein, shall count and record the number thereof, and then mix (*r*) together the whole of the ballot papers contained in the ballot boxes. If polls have been taken at the same date for the election both of rural district councillors and of parish councillors, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open one of the ballot boxes and taking out the papers therein shall separate those relating to the election of rural district councillors from any relating to the election of parish councillors, and shall count and record the number of ballot papers relating to each election. He shall then secure the ballot papers relating to each election by placing them in separate packets under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall proceed in like manner with any other ballot boxes and the papers therein. When all the ballot boxes and the papers therein have been so dealt with, he shall open all the packets of ballot papers relating to one election, and shall mix all such papers together, and shall proceed to count the votes, keeping the papers relating to any other election sealed up until he has completed such counting. He shall afterwards deal in manner aforesaid with the packets and papers relating to the other election or elections.

The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding, if and so far as he thinks it necessary, the hours between the close of the poll and nine o clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such paper and documents.

36. The returning officer shall endorse " rejected " on any ballot paper which he may reject as invalid, and shall add to the endorsement " rejection objected to," if an objection be in fact made by any agent to his decision (*s*). The returning officer shall draw up a statement showing the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which the voter could be identified ;
4. Unmarked or void for uncertainty ;

and shall on request allow any agents of the candidates to copy such statement. If the votes are counted by a deputy returning officer he shall, with the declaration of the result of the poll, report to the returning officer the number of ballot papers rejected and not counted by him, under the above heads, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates before such report is sent in, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account

(*q*) See note (*h*), *ante*, p. 2322. (*r*) See note (*i*), *ante*, p. 2322.
(*s*) See note (*k*), *ante*, p. 2323.

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If the votes are counted by a deputy returning officer, he shall report to the returning officer the result of the verification, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it. He shall, with his report, send to the returning officer the sealed packets of counted and rejected ballot papers, and the unopened sealed packets which he has received from any presiding officer.

38. Lastly, the returning officer shall carefully preserve for the period hereinafter mentioned all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the parish for which such election was held.

39. The returning officer shall retain for six months all documents relating to an election of rural district councillors, and then, unless otherwise directed by an order of the county court having jurisdiction in the rural district or in any part thereof, or of any tribunal in which the election is questioned, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the returning officer, except under the order of the county court or tribunal aforesaid, to be granted by such court or tribunal on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the court or tribunal making the same may think expedient, and shall be obeyed by the returning officer (*t*).

41. No person shall, except by order of the county court having jurisdiction in the rural district or any part thereof, or of any tribunal having cognisance of any question relating to the election, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the returning officer. Such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the court or tribunal making the order may think expedient: Provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid (*u*).

42. All documents in the custody of a returning officer in pursuance of this Act, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may have been or may hereafter be prescribed by the council of the county in which the parish is situate, and the returning officer shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may have been or may hereafter be prescribed by the county council.

43. Where an order is made for the production by the returning officer of any document in his possession relating to any specified election of rural district councillors, the production by such officer or his agent of the document ordered, in such manner as may be directed by such order, or by an order of the court having power to make such first-mentioned order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such returning officer or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

43 (a). There shall be an appeal from any order of the county court under these rules in like manner as in other cases in such court (*x*).

(*t*) See note (*m*), *ante*, p. 2324. (*u*) See note (*o*), *ante*, p. 2324.
(*x*) See note (*p*), *ante*, p. 2324.

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General provisions.

47. If the returning officer presides at any polling station the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. The returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his, if appointed under Rule 31 of this Schedule, might have undertaken, and may, if he does not appoint such an agent (*y*), be present at the counting of the votes, or may himself take the place of such agent.

Provided that any person acting under this rule may at any time before so acting make the statutory declaration required by Rule 54 of this Schedule, but he shall not so act until he has made such declaration.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent for the purposes of attending a polling station, or at the counting of the votes dies, or becomes incapable of acting during the time of the election, another agent may be appointed in his place, and notice shall forthwith be given to the returning officer in writing of the name and address of any agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, and also every officer, clerk, or agent authorised to attend at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in any wise invalidate the act or thing done.

SECOND SCHEDULE TO ACT.

NOTE.—The forms contained in this Schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable and when so used shall be sufficient in law.

FORM OF BALLOT PAPER.

Form of front of ballot paper.

ELECTION OF RURAL DISTRICT COUNCILLORS.

Counterfoil No.

NOTE.—*The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.*

1	ADAMS (Walter Adams, of Green Farm, Farmer).	
2	HIGGINS (William Henry Higgins, of Mudford, Agricultural Labourer).	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Wilts, gentleman).	
4	PRITCHARD (Jane Pritchard, of Rose Villa, Married Woman).	

(*y*) See note (*q*), *ante*, p. 2324.

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Form of back of ballot paper.

No.

Election of Rural District Councillors for Parish [*or* United Parishes, *or* Ward of Parish] , 19 .

NOTE.—The number on the ballot paper is to correspond with that in the counterfoil.

DIRECTIONS AS TO PRINTING BALLOT PAPER.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, and the names, places of abode, and descriptions, and the number on the back of the paper, shall be printed in small characters.

FORM OF DIRECTIONS FOR THE GUIDANCE OF THE VOTER IN VOTING, WHICH SHALL BE PRINTED IN CONSPICUOUS CHARACTERS, AND PLACARDED OUTSIDE EVERY POLLING STATION AND IN EVERY COMPARTMENT OF EVERY POLLING STATION.

The voter may vote for candidates as rural district councillors.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidates, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

NOTE.—These directions will be illustrated by examples of the ballot paper.

FORM OF STATUTORY DECLARATION OF SECRECY.

I solemnly promise and declare, that I will not at this election of rural district councillors for the parish of [*or* united parishes of , *or* ward of the parish of] do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

NOTE.—The section must be read to the declarant by the person taking the declaration. One declaration may be made by the returning officer in respect of all the parishes for which he is returning officer.

FORM OF DECLARATION OF INABILITY TO READ.

I, *A. B.*, of , being numbered on the register of parochial electors for the parish of , do hereby declare that I am unable to read.

A. B., his mark.

day of , 19 .

I, the undersigned, being the presiding officer for the polling station for the parish of [*or* united parishes of , *or* ward of the parish of], do hereby certify that the above declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

Signed, *C. D.*,
Presiding officer for polling station for the parish of [*or* united parishes of , *or* ward of the parish of].

day of 19

FOURTH SCHEDULE.

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SECTIONS 74 AND 75 OF THE MUNICIPAL CORPORATIONS ACT, 1882, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF RURAL DISTRICT COUNCILLORS.

Offences in relation to nomination papers.

74.—(1) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2) An attempt to commit any such offence shall be punishable as the offence is punishable.

Neglect of duty by returning officer or deputy returning officer.

75.—(1) If a person who has undertaken to act as returning officer, or deputy returning officer, at an election of rural district councillors, neglects or refuses to conduct or declare the election in manner provided by the Local Government Act, 1894, and the Rural District Councillors Election Order, 1898, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(2) An action under this section shall not lie after three months from the neglect or refusal.

FIFTH SCHEDULE.

PROVISIONS OF THE MUNICIPAL CORPORATIONS ACT, 1882, RELATING TO THE ACCEPTANCE OF OFFICE, RE-ELIGIBILITY OF HOLDERS OF OFFICE, AND FILLING OF CASUAL VACANCIES, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF RURAL DISTRICT COUNCILLORS.

Obligation to accept office or pay fine.

34.—(1) Every qualified person elected or deemed to be re-elected to the office of rural district councillor, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within one month after notice of being elected or deemed to be re-elected, or shall, in lieu thereof, be liable to pay to the district council a fine of such amount, not exceeding fifty pounds, as the district council by regulations determine, and such fine shall be placed to the credit of the parish for which the person fined was elected.

(2) If there are no regulations determining fines, the fine shall be twenty pounds.

(3) The persons exempt under this section are—

Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, and any person who having within five years before the day of election served the office of rural district councillor for the parish or other area, claims exemption within ten days after notice of election or of being declared to be deemed to be re-elected.

(4) A fine payable under this section shall be recoverable summarily.

(5) If a person is either elected or deemed to be re-elected rural district councillor in more than one parish or other area in the rural district for which the election is held, he shall not accept office in respect of more than one of such areas, and if he accepts office or pays the fine for non-acceptance of office in respect of one of such areas, he shall not be liable to a fine for non-acceptance of office in respect of any other of such areas.

(6) Any person who has been nominated and elected without his consent to his nomination being previously obtained shall not be liable to a fine under this section.

Declaration on acceptance of office.

35.—A person elected or deemed to be re-elected to the office of rural district councillor shall not, until he has made and subscribed before two members of the district council, or the clerk to the district council, or, if he is absent from the United Kingdom, before a British consul, a declaration in the following form or in a form to the like effect, act in the office except in administering that declaration :

Form of Declaration on Acceptance of Office.

I, *A. B.*, having been elected [*or* being deemed to be re-elected] rural district councillor for the rural district of , in respect of the parish of [*or* of the united parishes of and , *or* of the ward of the parish of], hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

Dated this day of , 19 .

This declaration was made and subscribed before us*

Members of the district council } .
of the above-named district. } .

* If the declaration is made and subscribed before the clerk or a consul, adapt form accordingly.

Appendix II.

Power to receive declaration.

239.—(1) Members of the district council or the clerk or a British consul shall have authority to receive the declaration required to be made by a rural district councillor without any commission or authority other than this Act.

(2) The declaration, if made before a British consul, shall be forthwith sent to the clerk to the district council

Penalty on acting in office without making declaration.

41.—(1) If any person acts in the office of rural district councillor without having made the declaration by this Act required, he shall for each offence be liable to a fine not exceeding twenty pounds, recoverable by action.

Re-eligibility of office-holders.

37. A person ceasing to hold the office of rural district councillor shall, unless disqualified to hold the office, be re-eligible.

Filling of casual vacancies.

40.—(1) On a casual vacancy in the office of rural district councillor, an election shall be held in accordance with the Rural District Councillors Election Order, 1898; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2) In case of more than one casual vacancy in the office of rural district councillor being filled at the same election, not being the ordinary election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the district council.

(3) Non-acceptance of office by a person elected or deemed to be re-elected creates a casual vacancy.

Time for filling casual vacancies.

66.—(1) On a casual vacancy in the office of rural district councillor, the election shall be held within one month after notice in writing of the vacancy has been given to the chairman of the district council or to the clerk by two councillors.

(3) The day of election shall be fixed by the clerk to the district council.

(4) Nothing in this Act shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election (*a*).

Given under the Seal of Office of the Local Government Board, this first day of January, in the year one thousand eight hundred and ninety-eight.

(L.S.) HENRY CHAPLIN, *President*.

HUGH OWEN, *Secretary*.

ELECTRIC LIGHTING.

BOARD OF TRADE REGULATIONS UNDER THE ELECTRIC LIGHTING ACTS, 1882 AND 1888.

(A) FOR SECURING THE SAFETY OF THE PUBLIC, AND (B) FOR ENSURING A PROPER AND SUFFICIENT SUPPLY OF ELECTRICAL ENERGY.

DEFINITIONS.

In the following regulations—

The expression "the Order" means the

The expression "the undertakers" means the undertakers for the purposes of the Order.

The expression "consumer's wires" means any electric lines on the consumer's premises which are connected with the service lines of the undertakers at the consumer's terminals.

The expression "sub-station" means any premises in which energy is transformed or converted for the purpose of supply to consumers, and which are large enough to admit the entrance of a person after the transforming or converting apparatus is in position, provided that for the purpose of these regulations any place within any such premises which is used solely for some purpose other than such transformation or conversion shall not be deemed to form part of a sub-station.

(*a*) See note (*y*), *ante*, p. 2328.

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The expression "overhead line" means any electric line which is placed above ground and in the open air.

The expression "pressure" means the difference of electrical potential between any two conductors through which a supply of energy is given, or between any part of either conductor and the earth; and, subject to the variations allowed by No. B 3 of these regulations—

(a) Where the conditions of the supply are such that the pressure at any pair of consumer's terminals does not exceed 250 volts, the supply shall be deemed a low pressure supply;

(b) Where the conditions of the supply are such that the pressure exceeds 250 volts but does not exceed 650 volts, the supply shall be deemed a medium pressure supply;

(c) Where the conditions of the supply are such that the pressure exceeds 650 volts but does not exceed 3,000 volts, the supply shall be deemed a high pressure supply; and

(d) Where the conditions of the supply are such that the pressure exceeds 3,000 volts, the supply shall be deemed an extra high pressure supply.

The expressions "factory," "workshop," and "quarry" have the same meaning as in the Factory and Workshop Act, 1901.

The expression "mine" means a mine to which the Coal Mines Regulations Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies.

Where these regulations require any metallic body to be "efficiently connected with earth," it shall be connected with the general mass of earth in such manner as will ensure at all times an immediate and safe discharge of electrical energy.

Other expressions to which meanings are assigned in the Order or in the Electric Lighting Acts, 1882 and 1888, have the same respective meanings in these regulations.

A.—REGULATIONS FOR SECURING THE SAFETY OF THE PUBLIC.

General.

1. The pressure of a supply delivered to any consumer shall not exceed the limit of low pressure, except for special purposes, for which a medium pressure supply may be given on the consumer undertaking to comply with the following conditions:—

(a) Where the supply is for power purposes—

(1) The frame of every electric motor shall be efficiently connected with earth.

(2) The consumer's wires forming the connections to motors, or otherwise in connection with the supply, shall be, as far as practicable, completely enclosed in strong metal casing efficiently connected with earth, or they shall be fixed in such a manner that there shall be no danger of any shock.

(3) The supply to every motor shall be controlled by means of an efficient cut-off switch, placed in such a position as to be easily handled by the person in charge of the motor, and connected so that by its means all pressure can be cut off from the motor itself, and from any regulating switch, resistance or other device in connection therewith.

(4) Switches, efficient fuses or other automatic circuit-breakers shall be provided, so as to protect the circuits from excess of current, and all switches and cut-outs shall be so enclosed and protected that there shall be no danger of any shock being obtained in the ordinary handling thereof, or of any fire being caused by their normal or abnormal action.

(5) A notice shall be fixed in a conspicuous position at every motor and switch board in connection with the supply forbidding unauthorised persons to touch the motors or apparatus.

(b) Where the supply is for arc lamps in series—

(1) The consumer's wires forming the connections to the arc lamps, or otherwise in connection with the supply, shall be, as far as

practicable, completely enclosed in strong metal casing efficiently connected with earth, or they shall be fixed in such a manner that there shall be no danger of any shock.

(2) The supply to every arc lamp shall be controlled by means of an efficient cut-off switch, placed in such a position as to be easily handled by the person in charge of the arc lighting, and connected so that by its means all pressure can be cut off from the arc lamp itself, and from any regulating switch, resistance or other device in connection therewith. Provided that where the arc lamps are connected in series across the outer conductors of a three-wire system, it shall be sufficient if one such switch be provided for each series of arc lamps.

(3) Switches, efficient fuses or other automatic cut-outs shall be provided, so as to protect the circuits from excess of current, and all switches and cut-outs shall be so enclosed and protected that there shall be no danger of any shock being obtained in the ordinary handling thereof, or of any fire being caused by their normal or abnormal action.

(c) Where the supply is for incandescent lamps in series—

(1) The consumer's wires forming the connections to the incandescent lamps, or otherwise in connection with the supply, shall be completely enclosed in strong metal casing, and this casing, together with the switches and lamp holders, if metallic, shall be efficiently connected with earth.

(2) Switches, efficient fuses or other automatic cut-outs shall be provided so as to protect the circuits from excess of current, and all switches and cut-outs shall be so enclosed and protected that there shall be no danger of any shock being obtained in the ordinary handling thereof, or of any fire being caused by their normal or abnormal action.

Where the supply is for any special purpose other than those above mentioned, or where the pressure of the supply exceeds the limits of medium pressure, it shall be subject to such other regulations as the Board of Trade may from time to time prescribe.

This regulation shall not apply within the premises of a factory, a workshop, a mine, or a quarry.

2. When the pressure between the outer conductors of a three-wire system exceeds 250 volts and the three wires of the system or two pairs of wires are brought into a consumer's premises, the supply shall be given to two pairs of terminals arranged in such a manner that there shall be no danger of any shock, and the wiring from these terminals shall be kept distinct.

This regulation shall not apply within the premises of a factory, a workshop, a mine, or a quarry.

3. An extra high pressure supply shall not be given to any consumer's premises other than a factory, a workshop, a mine, a quarry, or electric traction works, waterworks, sewerage or drainage works; and no such supply shall be given to electric traction works, waterworks, sewerage or drainage works, except with the consent of the Board of Trade and subject to such regulations as the Board may prescribe.

4. The sectional area of the conductor in any electric line laid or erected in any street after the date of these regulations shall not be less than that of a strand of seven wires, each of which is of No. 20 standard wire gauge, and the sectional area of every wire in a strand forming any such conductor shall not be less than that gauge.

This regulation shall not apply in the case of an electric line placed in a lamp-post.

5. Every low pressure and medium pressure main shall be tested for insulation after having been placed in position and before it is used for the purposes of supply, the testing pressure being the maximum pressure to which it is intended to be subjected in use, and in any case at least 200 volts, and the undertakers shall duly record the results of the tests of each main, or section of a main.

6. The insulation of every complete circuit used for the supply of energy, including all machinery, apparatus, and devices forming part of, or in con-

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nection with, that circuit, shall be so maintained that the leakage current shall not under any conditions exceed one-thousandth part of the maximum supply current; and suitable means shall be provided for the indication and localisation of leakage. Every leakage shall be remedied without delay.

Every such circuit shall be tested for insulation at least once in every week, and the undertakers shall duly record the results of the testings.

Provided that where any part of any electric circuit is connected with earth, either in accordance with these regulations or with the approval of the Board of Trade, the provisions of this regulation shall not apply to that part of the circuit so long as the connection with earth exists.

7. A high pressure circuit shall not be brought into use unless the insulation of every part thereof has withstood the continuous application, during half an hour, in the case of every electric line of a pressure twice the maximum pressure to which it is intended to be subjected in use, and, in the case of every machine, device, or apparatus, of a pressure 50 per cent. greater than the said maximum pressure.

The undertakers shall duly record the results of each test.

8. Every high pressure main, conductor, or other apparatus shall be protected by a suitable fuse or automatic circuit-breaker.

Provided that it shall not be incumbent upon the undertakers to provide such a fuse or circuit-breaker for the outer conductor of a concentric main which is, with the approval of the Board of Trade, efficiently connected with earth.

9. In every case where a high pressure supply is transformed for the purpose of supply to one or more consumers, some suitable automatic and quick-acting means shall be provided to protect the consumer's wires from any accidental contact with or leakage from the high pressure circuit, either within or without the transforming apparatus.

This regulation shall not apply within the premises of a factory, a workshop, a mine, or a quarry, where the high pressure transformer is under the jurisdiction of the Home Office.

10. The metallic portion of every high pressure transformer, with the exception of the conductors thereof, shall be efficiently connected with earth.

This regulation shall not apply within the premises of a factory, a workshop, a mine, or a quarry, where the high pressure transformer is under the jurisdiction of the Home Office.

11. Where any portion of any electric line or any support for an electric line is exposed in such a position as to be liable to cause injury from lightning, it shall be efficiently protected against such liability.

12. Where any accident by explosion or fire, or any other accident of such kind as to have caused or to be likely to have caused loss of life or personal injury has occurred at any part of any electric line or work, the undertakers shall give immediate notice thereof to the Board of Trade.

Overhead Lines.

13. Overhead lines shall not after the date of these regulations be erected or maintained except in accordance with such regulations as the Board may prescribe; provided that this regulation shall not apply to any electric lines which have been erected at the date of these regulations so long as those lines are maintained in accordance with any regulations of the Board of Trade which are in force and applicable thereto at that date and with any requirements of the Board made thereunder.

Electric Lines other than Overhead Lines.

14. All conduits, pipes, casings, and street boxes used as receptacles for electric lines shall be constructed of durable material, and where laid under carriage ways shall be of ample strength to prevent damage from heavy traffic, and reasonable means shall be taken by the undertakers to prevent accumulation of gas in such receptacles.

15. Where any electric line crosses, or is in proximity to, any metallic substance, special precautions shall be taken by the undertakers against

 the possibility of any electrical charging of the metallic substance from the line or from any metal conduit, pipe, or casing enclosing the line.

16. All metal conduits, pipes, or casings containing any high pressure electric line shall be efficiently connected with earth, and shall be so jointed and connected across all street boxes and other openings as to make good electrical connection throughout their whole length.

17. Where the conductors of electric lines placed in any conduit are not continuously covered with insulating material they shall be secured in position, and no unfixed uninsulated material of a conducting nature shall be contained in the conduit. No such conductor shall be at a pressure exceeding 300 volts from earth.

Adequate precautions shall also be taken to ensure that no accumulation of water shall take place in any part of the conduit, and to prevent any dangerous access of moisture to the conductors or the insulators.

The insulators of any such electric line shall be so disposed that they can be readily inspected, but this requirement shall not apply to any such insulators which before the date of these regulations were not required by any regulation then in force to be so capable of ready inspection.

18. Every portion of any high pressure electric line placed above the surface of the ground, or in any subway not in the sole occupation of the undertakers shall be completely enclosed either in a tube of highly insulating material embedded in brickwork, masonry, or cement concrete, or in strong metal casing efficiently connected with earth.

19. Where any high pressure electric line is laid beneath the surface of the ground, efficient means shall be taken to render it impossible that the surface of the ground or any neighbouring electric line or conductor shall become charged by leakage from the high pressure electric line.

20. A high pressure electric line shall not be used for the supply of energy before it has been completely laid, properly jointed, examined, and tested, or until it is in the sole charge of the undertakers, and every such line shall during its use be in the sole charge of the undertakers.

Sub-stations and Street Boxes.

21. Sub-stations shall be established in suitable places and shall be in the sole occupation and charge of the undertakers. Sub-stations shall be erected above ground wherever possible, but where necessarily underground, due provision shall be made for ventilation and for drainage.

22. In addition to the provisions contained in regulation 14 as to the construction of receptacles for electric lines, the following conditions shall be observed with respect to street boxes :—

(a) The covers of all street boxes shall be so secured that they cannot be opened except by means of a special appliance.

(b) The covers of all street boxes containing high pressure apparatus other than cables shall be connected to strips of metal laid immediately underneath the street, and efficient means shall be taken to render it impossible that the covers or other exposed parts of these boxes, or any adjacent material forming the surface of the street, shall become electrically charged, whether by reason of leakage, defect, or otherwise.

(c) Where street boxes are used as transformer chambers, reasonable means shall be taken to prevent as far as possible any influx of water, either from the adjacent soil or by means of pipes ; and in the case of any such street box exceeding one cubic yard in capacity, ample provision shall be made, by ventilation or otherwise, for the immediate escape of any gas which may by accident have obtained access to the box, and for the prevention of danger from sparking.

(d) All street boxes shall be regularly inspected for the presence of gas, and if any influx or accumulation is discovered, the undertakers shall give immediate notice to the authority or company whose gas mains are laid in the neighbourhood of the street box.

(e) Where mains at different pressures pass through the same street box they shall be readily distinguishable from one another.

23. The maximum power supplied to any underground sub-station or street

box shall not, without the consent of the Board of Trade, exceed 30 kilowatts in the case of a sub-station or street box containing a single transformer, or 75 kilowatts in the case of a sub-station or street box containing two or more transformers. **Appendix II.**

Consumer's Premises.

24. The undertakers shall be responsible for all electric lines, fittings, and apparatus belonging to them, or under their control, which may be upon a consumer's premises, being maintained in a safe condition and in all respects fit for supplying energy.

25. In delivering the energy to a consumer's terminals the undertakers shall exercise all due precautions so as to avoid risk of causing fire on the premises.

26. A suitable safety fuse or other automatic circuit-breaker shall be inserted in each service line within a consumer's premises as close as possible to the point of entry, and contained within a suitable locked or sealed receptacle of fireproof construction, except in cases where the service line is protected by fuses in a street box; but no fuse or automatic circuit-breaker shall be inserted in the intermediate conductor of a three-wire system.

27. All service lines and apparatus placed on a consumer's premises shall be highly insulated and thoroughly protected against injury to the insulation or access of moisture, and any metal forming part of the electric circuit shall not unless efficiently connected with earth be exposed so that it can be touched. All electric lines shall be so fixed and protected as to prevent the possibility of electrical discharge to any adjacent metallic substance.

28. Where the general supply of energy is a high pressure supply, and transforming apparatus is installed on a consumer's premises, the whole of the high pressure service lines, conductors, and apparatus, including the transforming apparatus itself, so far as they are on the consumer's premises, shall be completely enclosed in solid walls, or in strong metal casing efficiently connected with earth and securely fastened throughout.

29. The undertakers shall not connect a consumer's wires with their mains unless they are reasonably satisfied that the connection would not cause a leakage from those wires or fittings exceeding one ten-thousandth part of the maximum supply current to the premises; and where the undertakers decline to make such connection they shall serve upon the consumer a notice stating their reasons for so declining.

30. If the undertakers are reasonably satisfied, after making all proper examination by testing or otherwise, that a leakage exists at some part of a consumer's wires or fittings of such extent as to be a source of danger, any officer of the undertakers, duly authorised by them in writing, or, if the undertakers so require, an electric inspector, may, for the purpose of discovering whether the leakage exists at any part of a circuit within or upon any consumer's premises, by notice require the consumer at some reasonable time after the service of the notice to permit him to inspect and test the wires and fittings belonging to the consumer and forming part of the circuit.

In any case where the undertakers require the services of an electric inspector under this regulation they shall pay him the prescribed fee.

If on any such testing the officer or the electric inspector discovers a leakage from the consumer's wires exceeding one ten-thousandth part of the maximum supply current to the premises, or if the consumer does not give all due facilities for inspection and testing, the undertakers shall forthwith discontinue the supply of energy to the premises in question, giving immediate notice of the discontinuance to the consumer, and shall not recommence the supply until they are reasonably satisfied that the leakage has been removed. This regulation shall not affect any power contained in the order or otherwise enabling the undertakers to discontinue the supply.

31. If any consumer is dissatisfied with the action of the undertakers in refusing to give, or in discontinuing or in not recommencing the supply of energy to his premises, the wires and fittings of that consumer shall, on his application and on payment of the prescribed fee, be tested for the existence of leakage by an electric inspector.

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This regulation shall be endorsed on every notice given under the provisions of either of the two last preceding regulations.

Arc Lighting.

32. Arc lamps used in any street for public lighting shall be so fixed as not to be in any part at a less height than 10 feet from the ground.

33. All arc lamps shall be so guarded as to prevent pieces of ignited carbon or broken glass falling from them, and shall not be used in situations where there is any danger of the presence of explosive dust or gas.

Connections of Circuits with Earth.

34. Where the pressure of a supply between the adjacent conductors of a three-wire system of mains exceeds 125 volts, the intermediate conductor shall be connected with earth in accordance with the following conditions :—

(a) The connection with earth of the intermediate conductor shall be made at one point only on each distinct circuit, namely, at the generating station, sub-station, or transformer, and the insulation of the circuit shall be efficiently maintained at all other parts.

(b) The current from the intermediate conductor to earth shall be continuously recorded, and if it at any time exceed one-thousandth part of the maximum supply current, steps shall be immediately taken to improve the insulation of the system.

Penalties.

35. If the undertakers make default in complying with any of the preceding regulations, they shall on conviction be liable to a penalty not exceeding £10 for every such default, and to a daily penalty not exceeding £10.

The recovery of a penalty under these regulations shall not affect the liability of the undertakers to make compensation in respect of any damage or injury which may be caused by reason of the default.

B.—Regulations for ensuring a Proper and Sufficient Supply of Electrical Energy.

1. From the time when the undertakers commence to supply energy through any distributing main, they shall maintain a supply sufficient for the use of all the consumers for the time being entitled to be supplied from that main ; and that supply shall, except so far as the Board of Trade may otherwise from time to time permit, be constantly maintained, and in the case of continuous currents, without change of polarity. Provided that, for the purposes of testing, or for any other purposes connected with the efficient working of the undertaking, the authority by whom the electric inspector is appointed may give permission to the undertakers to discontinue the supply at such intervals of time and for such periods as that authority may think expedient. When the supply is so discontinued, or the polarity is changed, notice to all persons likely to be affected shall be given of such discontinuance, or change, and of the probable duration thereof.

2. The system of distributing mains shall be separated into sections corresponding approximately to the different feeders, and these sections shall be interconnected only through suitable circuit breakers or fuses, arranged so as to be easily inspected.

3. Before commencing to give a supply of energy to any consumer, the undertakers shall declare to that consumer the constant pressure at which they propose to supply energy at his terminals. The pressure so declared shall be constantly maintained, subject to a variation not exceeding 4 per cent. above or below the declared pressure, under any conditions of supply which the consumer is entitled to receive, or such other variation as the Board of Trade may from time to time allow, and shall not be altered or departed from

to an extent greater than that variation except by consent of the Board of Trade, and upon such terms and conditions as the Board of Trade may impose, and after public notice has been given during the period of one month, in such manner as the Board of Trade may require, of the intention of the undertakers to apply for consent to alter the same.

Provided that any regulations in force at the date of these regulations whereby the consent of any consumer (or in default thereof the consent of the Board of Trade) was then required to a change in the declared constant pressure to that consumer's premises shall, notwithstanding anything in these regulations, continue of full force and effect in the case of any consumer whose consent was then so required, and shall apply in that case as if it had been expressly set out in these regulations.

4. Before commencing to give a supply of energy to any consumer, the undertakers shall declare to that consumer the system which they propose to adopt, whether alternating or continuous current, and, in the case of alternating current, the frequency—that is to say, the number of complete periods per second at which they propose to supply. The system and frequency so declared shall be maintained subject, as respects frequency, to a variation not exceeding 2½ per cent. above or below the declared frequency, and shall not be altered or departed from except by consent of the Board of Trade, and upon such terms and conditions as the Board of Trade may impose, and after public notice has been given during the period of one month, in such manner as the Board of Trade may require, of the intention of the undertakers to apply for consent to alter the same.

5. If the undertakers make default in complying with any of these regulations as to supply, they shall, subject to the provisions of the Order, be liable on conviction to a penalty not exceeding £5 for every such default, and to a daily penalty not exceeding £5.

These regulations are made subject to the power of the Board of Trade to make such further or other regulations as they may think expedient; and nothing in these regulations shall be construed to authorise the undertakers to lay any electric line or work their undertaking otherwise than in accordance with the Order and the principal Act, or to supply energy otherwise than by a system for the time being approved by the Board of Trade under the Order.

These are the regulations and conditions for securing the safety of the public and for ensuring the proper and sufficient supply of electrical energy, made by the Board of Trade under the provisions of the Electric Lighting Acts, 1882 and 1888, and of the   , referred to in the letter from the Board of Trade to the   , of the 30th day of June, one thousand nine hundred and nine.

Except as hereinafter mentioned, the date of these regulations shall be the 1st day of July, 1909.

As to so much of any electrical station as was constructed before the 1st day of July, 1908, the date of these regulations shall be the 1st day of January, 1910.

Assistant Secretary,
Board of Trade.

ELECTRIC LIGHTING ACTS, 1882 TO 1909.

Rules made by the Board of Trade in pursuance of Section 5 of the Electric Lighting Act, 1882, with respect to Applications for Provisional Orders.

A.—Mode and Time of Making Application.

Rule I.—Every application for a Provisional Order must be made by memorial signed or sealed by, or on behalf of, the applicants, headed with a short title descriptive of the objects of the proposed application (corresponding with that at the head of the advertisement hereinafter mentioned, see Rule II.), addressed to the Board of Trade. The memorial must be lodged on or before the 21st day of December.

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B.—STEPS TO BE TAKEN BEFORE MAKING THE APPLICATION.

(a) *Notices which must be given.*

Rule II.—Applicants for a Provisional Order must, in the month of October or November, publish notice by advertisement of their intended application, and every such advertisement must contain the following particulars :—

1. The objects of the application.
2. The address and description of the applicants.
3. A description of the proposed area of supply (if any).
4. The names of the streets (if any) in which it is proposed that electric lines should be laid down within a specified time.
5. A list of the streets not repairable by a local authority and of the railways and tramways (if any) which the applicants propose to take special powers by the Order to break up.
6. The address of an office in London, and another office within the area of supply at which printed copies of the draft Order when applied for, and of the Order when made, can be obtained at a price of not more than one shilling each.

7.—(a) In the case of a Provisional Order to authorise the compulsory acquisition or the use of land for a generating station, a description of that land (*b*).

(b) In the case of a Provisional Order relating to the purchase of a generating station, mains, or other works used solely for supplying electricity within the districts of two or more local authorities, but not situated within any of those districts, a description of the position of the generating station, mains, or other works to be purchased.

(c) In the case of a Provisional Order for the constitution of a joint committee or joint board, the basis upon which the representation on, and the financial requirements of the joint committee or joint board and the contribution to the common fund by the constituent authorities are to be provided for.

The advertisement must in each case be headed with a short title, descriptive of the objects of the proposed application (corresponding with that at the head of the memorial), and it must state that every local or other public authority, company, or person desirous of bringing before the Board of Trade any objection respecting the application must do so by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it, "Electric Lighting Acts," on or before the 15th day of January next ensuing, and that a copy of such objection must also be forwarded to the parliamentary agents or solicitors for the Order.

The advertisement must be inserted once at least in each of two successive weeks in one and the same local newspaper, circulating in the district or districts to which the application relates, or, in the case of an application under section 7 of the Electric Lighting Act, 1909, in the districts of the local authorities making the application, or in such other newspaper as the Board of Trade may direct ; and once at least in the *London*, *Edinburgh*, or *Dublin Gazette*, according as the districts or district is or are situated in England, Scotland, or Ireland.

Rule III.—Any company or person intending to apply for a Provisional Order to authorise the distribution of electricity must on or before the 1st day of July in the year in which the application is made give notice to the local authority. (See section 4 (1), Electric Lighting Act, 1882) (*c*).

NOTE.—In a case where this notice has not been given the Board of Trade may notwithstanding grant the order provided the local authority waives its right to receive the

(*b*) At the time of proving the publication of the notice, the Board of Trade will require proof that at the date of the first publication of the notice no part of the land proposed to be compulsorily acquired belonged to any gas or water undertakers and was used or authorised to be used by them for the purposes of their undertaking. (See s. 24, Electric Lighting Act, 1909.)

(*c*) Except in the case of an application by the local authority for the district a Provisional Order to authorise the distribution of electricity will not be granted by the Board of Trade except to the body or person by whom or on whose behalf the notice required by s. 4, sub-s. 1, of the Electric Lighting Act, 1882, was given.

said notice. (See section 9, Electric Lighting Act, 1909.) The fact that such right has been waived must be proved in the same manner as the consent of a local authority. (See Rule IX.) **Appendix II.**

Rule IV.—Any local authority, company, or person intending to apply for a Provisional Order to authorise the distribution of electricity must, on or before the 1st day of November in the year in which the application is made, give notice of their intended application to every company or person authorised under statutory powers to distribute electricity within the area to which the proposed application relates; and any local authority, company, or person intending to apply for a Provisional Order to authorise the supply of electricity in bulk must, on or before the said date, give notice of their intended application to every local authority, company, or person authorised under statutory powers to supply electricity in bulk or to distribute electricity within the area to which the proposed application relates.

Rule V.—In the case of a Provisional Order to authorise the compulsory acquisition of land for the purpose of a generating station, the applicants must on or before the 15th day of December in the year in which the application is made, serve a notice on the owners, or reputed owners, lessees, or reputed lessees, and occupiers of all lands intended to be so acquired as shown on the deposited plan, describing in each case the particular lands intended to be so acquired.

Every such notice as aforesaid shall be as nearly as may be in the form set out in the schedule to these rules.

Rule VI.—On or before the 15th day of December in the year in which the application is made for a Provisional Order to authorise the compulsory acquisition or the use of land for the purpose of a generating station, the applicants must serve a notice upon the local authority of the district in which the land is situate and upon all owners or reputed owners and lessees or reputed lessees of land situate within three hundred yards of the land proposed to be so acquired or used (*d*).

Rule VII.—In any case where a local authority, company, or person is required to give notice to any local authority, company, or person, the notice must be given in writing, and must be served, either by leaving the same at the offices of the local authority or company or at the address of the person on or before the day prescribed in that behalf or by forwarding the same by post in a registered letter so that the same would in the ordinary course of post be delivered on or before that date.

(b) *Consent which must be obtained and how the same must be proved.*

Rule VIII.—An application for a Provisional Order to authorise the distribution or the supply in bulk of electricity (other than an application from the local authority of the district which comprises the area of supply) or the breaking up of roads outside the applicants' area of supply, will not be entertained by the Board of Trade unless proof of the consent of every local authority having jurisdiction within the area of supply or within the districts in which the roads are situate, as the case may be, to the grant of the Order, or where any such consent has been refused a request from the applicants asking the Board of Trade to dispense with the consent of such local authorities as have not consented and giving the reasons for such request, is deposited with the Board of Trade on or before the 22nd day of February.

Rule IX.—Where the consent of any local authority is required to the grant of the Provisional Order, the consent must be given by a resolution passed at a meeting of the local authority held after previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of the local authority are usually given; and the fact that such a resolution as aforesaid was duly passed must be proved by a certificate signed by the secretary or clerk to the local authority reciting a copy of the notice and of the resolution and declaring that the notice was duly given and the resolution duly passed (*e*).

(*d*) A generating station for the purposes of this Rule does not include a station for transforming, converting, or distributing electrical energy. (See s. 2 of the Electric Lighting Act, 1909.)

(*e*) At the time of proving a consent of the local authority to the grant of a Provisional Order, the applicants must deposit with the Board of Trade a copy of any agreement relating to such consent.

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(c) *Deposits which must be made on or before the 30th November.*

Rule X.—The applicants must in each case deposit at the office of the Board of Trade on or before the 30th day of November a copy of the advertisement referred to in Rule II.

In the case of a Provisional Order to authorise the distribution of electricity, the applicants must also deposit at the office of the Board of Trade a published map of the district on a scale of not less than six inches to a mile, or if there is no published map, then the best map procurable, showing the boundaries of the area of supply, and the streets in which it is proposed that electric lines shall be laid down within a specified time.

In the case of a Provisional Order to authorise the breaking up of roads, railways, and tramways outside an area of supply, or the supply of electricity in bulk, the applicants must deposit at the office of the Board of Trade a similar map showing, as the case may be, the roads, railways, and tramways proposed to be broken up, or the districts in which the supply in bulk is to be given.

In the case of a Provisional Order relating to the purchase of a generating station, mains, or other works used solely for supplying electricity within the districts of two or more local authorities, but not situated within any of those districts, the applicants must deposit at the office of the Board of Trade a similar map showing the area of supply and the position of the generating station, mains, and other works to be purchased.

In the case of a Provisional Order for the constitution of a joint committee or joint board the applicants must deposit at the office of the Board of Trade a similar map showing the districts or parts of districts in respect of which the joint committee or joint board is proposed to be constituted.

In the case of a Provisional Order to authorise the compulsory acquisition or the use of land for the purposes of a generating station, the applicants must deposit at the office of the Board of Trade a plan of the site of the land and, in the case of compulsory acquisition, a book of reference.

The plan must be on a scale of not less than a quarter of an inch to every hundred feet and must have shown thereon any building, yard, courtyard, land within the curtilage of any building, and any ground cultivated as a garden.

The book of reference must contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses proposed to be taken compulsorily and must describe such lands and houses respectively. It must also contain the names of the owners or reputed owners and lessees or reputed lessees of land situate within three hundred yards of the land upon which the generating station is to be constructed.

The applicants must also on or before the 30th day of November deposit a copy of the said advertisement and of the said maps or plan and book of reference for public inspection—

In England or Ireland, at the office of the clerk of the peace for every county, riding, or division, and at that of the local authority of every district

In Scotland, at the office of the principal sheriff clerk for every county, and where any county is divided into districts for sheriff court purposes, at the office of the sheriff clerk in each of such districts, and also at that of the local authority of every district

to which the application relates.

In the case of a Provisional Order relative to the administrative county of London, the applicants must also on or before the date aforesaid deposit a copy of the said maps, plan, and book of reference at the office of the London County Council.

(d) *Preparation of Draft Order.*

Rule XI.—The applicants must in each case prepare a draft of the proposed Order.

The draft Order must be in print. It must be printed on one side only and each schedule annexed must begin a new page.

The names and addresses of the parliamentary agents or solicitors for the Order must be printed on the outside of the draft.

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There must be a notice at the end of the draft stating that objections are to be made by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it "Electric Lighting Acts," and that the letter is to be sent to the Board of Trade on or before the 15th day of January next ensuing, and that a copy of the objections is to be forwarded to the parliamentary agents or solicitors for the Order.

The draft must, where the application is other than for the constitution of a joint committee or joint board, contain amongst other things—

1. The address and description of the applicants.

2. A description of the proposed area of supply (if any), and in the case of a Provisional Order for authorising the supply of electricity in bulk, a description of the roads, railways, and tramways along the route along which electric lines are to be laid for the purpose of giving the supply.

3 (*f*). A statement of the purposes for which a supply is to be given, viz., any or all of the public or private purposes specified in section 3 of the Electric Lighting Act, 1882, or in bulk.

4 (*f*). Provisions concerning the breaking up of roads, railways, and tramways, where powers are sought to be obtained by the Order for those purposes.

5 (*f*). Conditions of supply.

6 (*f*). Provisions for securing the safety of the public from injury by shock, fire, or otherwise.

7 (*f*). Provisions for enforcing the performance by the undertakers of their duties in relation to the supply of electricity and for the revocation of the Order where the undertakers fail to perform such duties.

8. In the case of a Provisional Order to authorise the compulsory acquisition or the use of land for the purposes of a generating station, a description of such land.

9. In the case of a Provisional Order to authorise a supply of electricity at any point within an area to be used for purposes incidental to the working or lighting of a railway, tramway, or canal (other than haulage or traction or the lighting of vehicles or vessels) partly within and partly without that area, a description of the railway, tramway, or canal, the names of the districts in which the electricity is to be used and a statement of the purposes for which the supply is to be given.

10. In the case of a Provisional Order relating to the purchase of a generating station, mains, or other works used solely for supplying electricity within the districts of two or more local authorities but not situate within any of those districts, a description of the generating station, mains, or other works to be purchased, and a list of the districts to which electricity is supplied therefrom.

11. In the case of a Provisional Order for the constitution of a joint committee or joint board the draft Order must, in addition to such of the particulars hereinbefore stated as shall be applicable, contain :—

(a) A description of the purposes for which the committee or board is to be constituted.

(b) Provisions for constituting the committee or board, for the appointment and removal of members, and for the meetings of the committee or board.

(c) Provisions (1) relating to the financial arrangements between the proposed constituent authorities ; (2) for the appointment and remuneration of officers ; and (3) for settling differences between the committee or board and any of the constituent authorities.

(d) Provisions as to audit of accounts (*g*).

(e) Provisions for adapting the provisions of the Electric Lighting Acts, 1882 to 1909, or any Provisional Order in force in the area of supply or any part thereof to the case of the committee or board proposed to be constituted.

(*f*) Except in the case of applications relating to the county of London, these particulars must not be set out at length in the draft Order, but must be provided for by the incorporation of the provisions contained in the schedule to the Electric Lighting (Clauses) Act, 1899.

(*g*) Where the accounts of one or more of the constituent authorities are subject to audit by an auditor appointed by a Government department the draft Order must provide for the accounts of the joint committee or joint board being so audited.

C.—Steps to be Taken when Making the Application.

(a) *Deposits which must be made with the Board of Trade.*

Rule XII.—The applicants must in each case when lodging their memorial deposit with it—

1. Six printed copies of the draft Order.

2. A list of the local authorities in whose districts the area of supply (if any) is situated.

3. In the case of a Provisional Order relating to the purchase of a generating station, mains, or other works used solely for supplying electricity within the districts of two or more local authorities but not situate within any of those districts, a list of the local authorities within whose districts the generating station, mains, and other works are situate.

4. A list of the local authorities, companies, or persons (if any) authorised to supply electricity under statutory powers within the area of supply.

5. In the case of an application by a local authority, the following particulars :—

(a) The sum proposed to be expended on the undertaking :

(b) Whether it is proposed to raise a loan for the purposes of the undertaking :

(c) The rateable value of the district :

(d) The amount of indebtedness and the borrowing powers of the applicants for all purposes :

(e) The amount of the rates in the pound : and

(f) A statement showing that a definite scheme (including an estimate of the cost) for the supply of electricity has been prepared and considered by the local authority, and a report by an electrical engineer on the proposed scheme.

In the case of a Provisional Order for the constitution of a joint committee or joint board there must be deposited with the memorial (in addition to such of the deposits hereinbefore specified as are applicable) the following particulars :—

(g) The rateable value of each of the districts of the proposed constituent authorities.

(h) The amount of indebtedness and the borrowing powers of each of the proposed constituent authorities.

(i) The amount of rates in the pound in the district of each of the proposed constituent authorities.

(j) A statement showing (where the proposal is not for the combination of existing undertakings actually worked) that a definite scheme (including an estimate of the cost) for the supply of electricity has been prepared and considered by the proposed constituent authorities and also a report by an electrical engineer on the proposed scheme.

(k) A statement of the proportions in which the cost is to be defrayed by the proposed constituent authorities.

(l) A copy of any agreement between the proposed constituent authorities relating to the application.

In the case of an application other than by a local authority, a statement of the capital proposed to be expended in connection with the undertaking, and the mode in which such capital is to be provided.

In the case of a Provisional Order to authorise the breaking up of roads, railways, or tramways outside an area of supply for the purpose of enabling electricity to be brought into that area from a generating station situated outside that area, there must also be deposited :—

(m) A list of the local authorities in whose districts the roads, railways, or tramways are situate ;

(n) A list of the roads, railways, and tramways.

6. If the applicants are a company incorporated under the provisions of the Companies Acts, a copy of the memorandum and articles of association.

7. A fee of £35 by cheque, payable to the Accountant-General of the Board of Trade, to cover ordinary expenses. If in consequence of inquiries or otherwise additional expense is incurred, the amount will be charged to the applicants and must be paid by them in addition to the ordinary fee.

(b) *Deposits which must be made at the Offices referred to in the Advertisement.*

Rule XIII.—The applicants must, or on before the 21st day of December, deposit a sufficient number of printed copies of the draft Order at offices in London and within the area of supply specified in the advertisement herein-before mentioned (see Rule II.), such copies to be there furnished to all persons applying for them, at a price of not more than one shilling each.

(c) *Deposits which must be made with the Local Government Board, the Secretary for Scotland, or the Local Government Board for Ireland.*

Rule XIV.—In the case of a Provisional Order for the constitution of a joint committee or joint board the applicants must, on or before the 21st day of December, deposit with the Local Government Board, the Secretary for Scotland, or the Local Government Board for Ireland, according as the application relates to an area of supply in England, Scotland, or Ireland, a copy of the draft Order and of every map, plan, or other document required to be deposited with the Board of Trade.

(d) *Deposit which must be made with the London County Council.*

Rule XV.—In the case of a Provisional Order relating to the administrative county of London the applicants must, on or before the 21st day of December, deposit a copy of the draft Order at the office of the London County Council who shall be entitled to make representations to and be heard by the Board of Trade thereon.

D.—OBJECTIONS TO GRANT OF ORDER—HOW TO BE MADE.

Rule XVI.—If any local or other public authority, company, or person desires to bring before the Board of Trade any objection respecting an application for a Provisional Order, they must do so by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it, "Electric Lighting Acts," on or before the 15th day of January next after the application. A copy of the objection must also on or before the said date be furnished to the parliamentary agents or solicitors for the Order. If any local or other public authority, company, or person desires to have any clauses or other amendments inserted in the Order, they must deliver the same to the Board of Trade, and also to the parliamentary agents or solicitors for the Order, within the time limited for bringing objections.

E.—PROOF OF COMPLIANCE WITH THE ELECTRIC LIGHTING ACTS AND FOREGOING RULES.

Rule XVII.—The parliamentary agents or solicitors for the Order must be prepared to prove compliance with the provisions of the Acts and the foregoing rules by the 15th day of January, and all such proofs must be completed on or before the 22nd day of February. Six days' notice will be given of the day and hour at which such agents or solicitors are to attend for the purpose at the office of the Board of Trade, and printed forms of proof will accompany the notice. These forms must be filled up and brought with the requisite documents to the office of the Board of Trade at the time fixed for receiving proof.

F.—STEPS TO BE TAKEN AFTER ORDER IS GRANTED.

Rule XVIII.—When a Provisional Order has been granted by the Board of Trade and delivered to the applicants, they must forthwith deposit printed copies for public inspection at the offices specified in Rule X., and must supply copies to all persons applying for the same, at a price of not more than one shilling each, and must further publish the same as the Board of Trade may direct.

Appendix II.

Proof of compliance with this rule must be made within one month from the grant of the Order in such manner as the Board of Trade may direct.

Rule XIX.—Where in a Provisional Order granted by the Board of Trade a deposited map is referred to, the promoters must, within one month from the grant of the Order, deposit at the Board of Trade a published map on a scale of not less than six inches to a mile, or if there is no published map then the best map procurable, showing the area of supply. The map must be mounted on linen, and must be certified as correct as regards its district by the clerk or surveyor to every local authority having jurisdiction within the area of supply.

G.—PROCEDURE WHEN BOARD OF TRADE HAVE REFUSED TO GRANT A PROVISIONAL ORDER AND APPLICANTS PROPOSE TO PROCEED BY PRIVATE BILL (SECTION 4 OF THE ELECTRIC LIGHTING ACT, 1909).

Rule XX.—In any case where the Board of Trade refuse to grant a Provisional Order to authorise a supply of electricity in bulk, on the ground that the matter ought to be dealt with by private Bill, and the applicants intend to proceed by private Bill, the notice required by section 4, sub-section 2, of the Electric Lighting Act, 1909, informing all opponents of that intention must be served by being addressed to each opponent or his parliamentary agent or solicitor within fourteen days from the date of the Board's refusal to grant the Provisional Order.

H. LLEWELLYN SMITH,
Secretary.

THE BOARD OF TRADE,
29*th July*, 1910.

NOTE.—When applications for Provisional Orders to authorise the distribution of electricity within the district of any local authority are received by the Board of Trade from that local authority, and also from any other authority, company, or person, the Board of Trade will give a preference to the application of the local authority of the district in every case where, in the opinion of the Board of Trade, no special circumstances exist which render such a preference inexpedient.

In cases of applications for a Provisional Order, to which objection is made by any person locally interested, the Board of Trade will, if they consider it expedient, hold a local inquiry, of which due notice will be given.

These rules are in addition to any requirements relating to applications for Provisional Order which are contained in the Standing Orders of Parliament

Schedule referred to in Rule V.

Form of Notice to Landowners and others.

(*Insert Title of Order.*)

SIR,—We beg to inform you that application is intended to be made to the Board of Trade for a Provisional Order under the Electric Lighting Acts, 1882 to 1909, and under the above-named short title, and that the property mentioned in the annexed Schedule or some part thereof, in which we understand you are interested as therein stated, will be liable to be taken compulsorily for the purposes of a generating station.

We also beg to inform you that a plan of the said land with a book of reference thereto have been or will be deposited on or before the 30th November for public inspection at the office of [specify the office (*if in England or Ireland*) of the clerk of the peace for the county, riding, or division and of the local authority of the district (*if in Scotland*) of the sheriff clerk for the county, of the sheriff clerk for the district (if any) and of the local authority of the district] on which plan your property is designated by the numbers in the annexed Schedule.

If there should be any error or misdescription in the annexed Schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

If you desire to bring before the Board of Trade any objection respecting the said application, you must do so by letter addressed to the Board of Trade

marked on the outside of the cover enclosing it "Electric Lighting Acts" on or before the 15th day of January next, and a copy of the objection must be furnished to us. Appendix II.

We are, &c.,

Schedule referred to in the foregoing notice describing the property therein alluded to—

Description of Property.	Number on Plan.	Owner.	Lessee.	Occupier.

ORDER IN COUNCIL.

At the Court at Buckingham Palace, the 10th day of January, 1910.

PRESENT.

The King's Most Excellent Majesty in Council.

Whereas by "The Weights and Measures Act, 1889," it is, among other things, enacted that the Board of Trade shall from time to time cause such new denominations of standards for the measurement of electricity as appear to them to be required for use in trade to be made and duly verified.

And whereas by Order in Council dated the twenty-third day of August, one thousand eight hundred and ninety-four, Her late Majesty Queen Victoria, by virtue of the power vested in her by the said Act, by and with the advice of Her Privy Council, was pleased to approve the several denominations of standards set forth in the Schedule thereto as new denominations of standards for electrical measurement.

And whereas in the said schedule the limits of accuracy attainable in the use of the said denominations of standards are stated as follows:—

For the ohm within one-hundredth part of one per cent.

For the ampere within one-tenth part of one per cent.

For the volt within one-tenth part of one per cent.

And whereas, at an International Conference on Electrical Units and Standards held in London in the month of October, one thousand nine hundred and eight, the international electrical units corresponding with the said denominations of standards were defined as follows:—

The international ohm is the resistance offered to an unvarying electric current by a column of mercury at the temperature of melting ice 14·4521 grammes in mass of a constant cross sectional area and of a length of 106·300 centimetres.

The international ampere is the unvarying electric current which when passed through a solution of nitrate of silver in water deposits silver at the rate of 0·00111800 of a gramme per second.

The international volt is the electrical pressure which when steadily applied to a conductor whose resistance is one international ohm will produce a current of one international ampere.

And whereas it has been made to appear to the Board of Trade to be desirable that the denominations of standards for the measurement of electricity should agree in value with the said international electrical units within the said limits of accuracy attainable.

And whereas the denominations of standards made and duly verified in the year one thousand eight hundred and ninety-four and set forth in the schedule to the said Order in Council have been again verified.

And whereas the Board of Trade are advised that the said denominations of standards agree in value with the said international electrical units within the said limits of accuracy attainable, except that in the case of the ohm the temperature should be 16·4 C. in place of 15·4 C. as specified in the schedule to the said Order in Council.

And whereas it has been made to appear to the Board of Trade that the said denominations of standards should be amended so that the aforesaid exception may be remedied.

Now, therefore, His Majesty, by virtue of the power vested in him by the said Act, by and with the advice of His Privy Council, is pleased to revoke

Appendix II. the said Order in Council dated the twenty-third day of August, one thousand eight hundred and ninety-four, and is further pleased to approve the several denominations of standards set out in the schedule hereto as denominations of standards for the measurement of electricity.

ALMERIC FITZROY.

" *Schedule above referred to.*

" I. Standard of Electrical Resistance.

" A standard of electrical resistance denominated one ohm agreeing in value within the limits of accuracy aforesaid with that of the international ohm, and being the resistance between the copper terminals of the instrument marked ' Board of Trade Ohm Standard Verified, 1894 and 1909,' to the passage of an unvarying electrical current when the coil of insulated wire forming part of the aforesaid instrument and connected to the aforesaid terminals is in all parts at a temperature of 16·4 C.

" II. Standard of Electrical Current.

" A standard of electrical current denominated one ampere agreeing in value within the limits of accuracy aforesaid with that of the international ampere and being the current which is passing in and through the coils of wire forming part of the instrument marked ' Board of Trade Ampere Standard Verified, 1894 and 1909,' when on reversing the current in the fixed coils the change in the forces acting upon the suspended coil in its sighted position is exactly balanced by the force exerted by gravity in Westminster upon the iridioplatinum weight marked A and forming part of the said instrument.

" III. Standard of Electrical Pressure.

" A standard of electrical pressure denominated one volt agreeing in value within the limits of accuracy aforesaid with that of the international volt, and being one-hundredth part of the pressure which when applied between the terminals forming part of the instrument marked ' Board of Trade Volt Standard Verified, 1894 and 1909,' causes that rotation of the suspended portion of the instrument which is exactly measured by the coincidence of the sighting wire with the image of the fiducial mark A before and after application of the pressure and with that of the fiducial mark B during the application of the pressure, these images being produced by the suspended mirror and observed by means of the eyepiece.

" In the use of the above standards the limits of accuracy attainable are as follows :—

" For the ohm, within one-hundredth part of one per cent.

" For the ampere, within one-tenth part of one per cent.

" For the volt, within one-tenth part of one per cent.

" The coils and instruments referred to in this Schedule are deposited at the Board of Trade Standardising Laboratory, 8 Richmond Terrace, Whitehall, London."

EMPLOYMENT OF CHILDREN.

I.

CIRCULAR TO LOCAL AUTHORITIES.

HOME OFFICE, WHITEHALL, S.W.,
14*th November*, 1903.

SIR,—I am directed by the Secretary of State to call the attention of the (*h*) County Council of to the provisions of the Employment of Children (*i*) Act of last session, and the important powers which are conferred by the Act on the council. A copy of the Act is enclosed.

(*h*) The circular letters issued to town councils and urban district councils were in the same terms.

(*i*) 3 Edw. 7, c. 45, *ante*, p. 2036.

The general purpose of the Act (which was preceded by the inquiry and report (*k*) of the Employment of School Children Committee, 1901) is to provide means for regulating the employment of children in those occupations in which it has hitherto been unregulated. One or two of the provisions of the Act (to be mentioned presently) apply to children employed in regulated occupations—that is to say, occupations which come under the Factory and Mines Acts; but speaking generally, its provisions apply only to occupations outside those Acts, such as work in and about shops (chiefly errand running, delivery of parcels, milk, newspapers, etc.); home industries not under the Factory Act; agricultural work; and street trading.

The inquiry of the Committee showed that "in England and Wales, a substantial number of children, amounting probably to 50,000, are being worked more than 20 hours a week in addition to 27½ hours at school, that a considerable portion of this number are being worked 30, 40, and some even 50 hours a week, and that the effect of this work is in many cases detrimental to their health, their morals, and their education, besides being often so unremitting as to deprive them of all reasonable opportunity for recreation." At the same time it was pointed out by the committee that no harm results from children doing a limited amount of work under healthy conditions, but that, on the contrary, limited and restricted work may be beneficial to them.

With a view to safeguard the health and morals of children so employed, and to prevent their employment seriously interfering with their education, Parliament has in the present Act laid down certain general restrictions applicable to all employments of children, and has, further, conferred on local authorities wide powers of imposing by byelaws additional restrictions either generally or for particular occupations. "Employment" is defined in the Act (*l*) so as to include every kind of employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person; but it does not include merely gratuitous services rendered by children to their parents or relatives in cases in which neither the children nor those for whom the services are performed make any gain thereby.

I.—STATUTORY RESTRICTIONS.

The general restrictions, applicable to all employment of children, which are imposed by the Act are contained in section 3.

They prohibit:

(1) The employment of any child (*i.e.* a person under the age of 14) between 9 p.m. and 6 a.m. (*see below as to power of council to vary these hours, p.* 2374);

(2) The employment of any child under 11 in street trading;

(3) The employment of any factory or workshop half-timer in any other occupation;

(4) The employment of any child to lift, carry, or move heavy weights likely to cause injury to the child; and

(5) Generally the employment of any child in any occupation likely to be injurious to the child's life, health or education, regard being had to his physical condition.

The duty of enforcing these statutory restrictions (with an exception to be mentioned presently) is placed on the local authorities. For the special purpose of enforcing the prohibition as regards employment in dangerous or unhealthy occupations, or in lifting heavy weights, power is given to the council to serve on an employer a medical certificate that the occupation or the lifting of any specified weight is injurious to the child, and such certificate becomes admissible as evidence in any proceedings against the employer.

These general provisions are the only provisions in the Act which apply to occupations regulated by the Factory and Mines Acts, and in such occupations the power of enforcing them is to be exercised by the Government inspector, and not by the local authority.

It must be remembered, however, that numerous home industries and many laundries (including small laundries in which the only persons employed are

(*k*) Report (Parliamentary paper, 1901, Cd. 849), price 3*d*.

(*l*) Sect. 13, *ante*, p. 2040.

Appendix II. members of the same family dwelling there and not more than two persons dwelling elsewhere) do not come under the Factory Act, and in these the council will be the authority to enforce the Act.

II.—BYELAWS.

The most important function of the council under the Act will be to supplement these general restrictions by additional provisions for the regulation of the age, the hours of employment, and the conditions of the employment of children in their district.

By sections 1 and 2 of the Act, wide powers are given to the council for this purpose, embracing the whole field of employment, always excepting those occupations which are already regulated by the Factory and Workshop Act, 1901, and the Mines Regulation Acts, 1872 and 1887. It is important to note that home industries and small laundries not under the Factory Act (*m*) will fall within the scope of the council's powers, and any employment of factory or mine children outside the factory, workshop, mine, etc. which is not covered by the Factory Act or Mines Acts.

Byelaws may be made to apply to the whole of the area of the council or to any specified part thereto.

Byelaws Regulating Employment of Children (*Section* 1).

Section 1 (1) empowers the council to prescribe for all children, or for boys and girls separately, and either for all occupations generally or for any specified occupation :—

(1) The age below which employment shall be illegal ;
(2) The hours of the day between which employment shall be illegal ;
(3) The daily and weekly maximum number of hours beyond which employment shall be illegal.

Section 1 (2) gives a power in the case of particular occupations, of prohibiting employment absolutely or permitting it subject to conditions.

The question to what extent it will be desirable for your council to regulate in the area under its jurisdiction the employment of children either in particular occupations or generally in all occupations will depend on the circumstances of the locality, and in the first instance is one for the consideration and determination of the council.

It will probably not be desirable in districts where there exists a variety of child occupations to attempt to impose one set of restrictions applicable to all. The restrictions for each occupation should be carefully considered with reference to the circumstances of the occupation, the hours at which it is carried on, the effects of the occupation on the health and character of the children, the extent to which it interferes with their education by making them unfit for work during school hours, etc., etc. A broad distinction may be drawn for example between indoor and outdoor employments. Employment in badly ventilated and insanitary homes on industrial work of a sedentary character, or in laundry work, is more harmful, and may properly be subjected to more stringent restrictions both as to age and hours than outdoor employments, such as that of messenger or newspaper boys which, if the hours are not excessive, is not found to be injurious to the health of the children employed in it ; or as employment in agricultural or garden work, which if moderate in amount and carrried on under good conditions is eminently beneficial (see pp. 11 and 15 of the Committee's Report).

The power of absolutely prohibiting particular employments is designed to meet exceptional cases where the physical or moral surroundings, or the dangerous or unhealthy character of the occupation, are such as to involve serious risk to the health or morals of the children employed in it.

It will be of the greatest importance for the successful administration of the Act that the restrictions imposed by the byelaws made under it should, as far as possible, be of such a character that infringements will be capable of easy detection and punishment. It would seriously weaken the benefits and influence of the Act if restrictions were imposed which were so difficult to

(*m*) See now the Factory and Workshop Act, 1907, *ante*, p. 2079.

enforce as to render the byelaws practically a dead letter. In regard to the limitation of hours it should be borne in mind that fixed daily hours are easier to enforce than a daily maximum of hours, and both are easier to enforce than a weekly maximum. Experience under other Acts, especially the Factory Act, has shown that it is impossible for inspectors charged with the enforcement of a weekly maximum of hours to count the hours during which the child or young person is at work, and that the child or young person cannot be relied on to give evidence on this point; and it therefore becomes a matter of great difficulty to produce sufficient evidence to justify a conviction. It will, for this reason, be desirable that, as far as possible, the council in any byelaws for limiting the hours of employment which it may desire to make should fix definite hours of employment; a weekly maximum should only be fixed by way of addition, or in special cases where it is found impossible to fix definite hours or a daily maximum.

Lastly, the byelaws must not distinguish between different classes of children or make the right to labour depend on the poverty or social circumstances of the child or its parents. To do so would, as pointed out by the Committee, "cast on the local authority the duty of distinguishing poor children from those in better circumstances, and give rise to endless discontent. . . . All children should have liberty to work as much and in such ways as is good for them, and no more."

With a view to assisting the council in the drafting of byelaws, the Secretary of State has prepared some forms of byelaws, which are enclosed herewith. They have been drawn up so as to indicate the kind of restrictions which may be imposed, and the form which the byelaws may take, without dealing with the question of the occupations to which they should apply; although in some cases particular occupations are given in the forms by way merely of example. They are intended only for the assistance of the local authority, and are not recommended by the Secretary of State for adoption in any or every case.

Byelaws Regulating Street Trading (*Section* 2).

Special powers of regulation are given by section 2 in regard to street trading, which is defined in the Act to include the hawking of newspapers, matches, flowers, and other articles; playing, singing, or performing for profit; shoeblacking and any other like occupation carried on in streets or public places. It was found by the Committee that this work was carried on "by a worse class of children and under worse moral influences than any other," that it was specially detrimental to young girls, and that in large centres of population it required special treatment (see pp. 16 and 21 of their Report). The local authority is accordingly empowered to make byelaws imposing conditions as to age, sex, etc., on the employment of persons under 16 in street trading, and if they think fit requiring all such person trading in the streets to be licensed by them. They may also determine the places and times at which street trading may be carried on, *e.g.*, restrict it to certain parts of their areas; and may impose other conditions as to the wearing of badges and general conduct of the children.

Two provisions of importance, to which the Secretary of State desires to draw the special attention of the council, are attached by the statute to the exercise of these powers.

The first is that the grant of a licence or the right to trade in the streets shall not be made subject to any conditions having reference to the poverty or *general* bad character of the person applying for a licence or claiming to trade. A child for example may not be refused a licence because his parents are dissolute or even criminal, nor because the child's own character is bad. It is precisely in such cases that a child has most difficulty in getting other and better employment, and, if street trading be forbidden to him, he may be deprived of the only means of earning a living honestly, and driven to a course of crime. This statutory restriction will not, however, the Secretary of State thinks, prevent the council providing in its byelaws for the suspension or revocation of a licence on the ground of bad conduct on the part of the licence holder—see No. 12 of Forms of Byelaws enclosed.

Secondly, the local authority in making byelaws are to have special regard to the desirability of preventing the employment of girls under 16 in streets or

Appendix II. public places. This is a question of great importance which will require careful inquiry and consideration by the council in connection with any byelaws they may propose to make. Street trading is of all occupations that which is the least suitable for young girls, and calls for more stringent regulations in their case than in that of boys. The clause will enable the council to prevent altogether the employment of girls in places specially dangerous to their morals, *e.g.*, in docks or crowded thoroughfares or the approaches to railway stations; or, where they do not prohibit it altogether, to impose conditions under which they may trade. At the same time, in considering the question of prohibition, whether absolute or conditional, the council should bear in mind that unless other employments will be open to the girls engaged in this occupation the effect of prohibition may be, by depriving them of their means of livelihood, to drive them to earning money by the very courses from which it is desired to protect them. These girls for the most part belong to the poorest and worst educated classes, are often unsuitable for domestic service and would not, in many cases, be able to obtain employment in factories or workshops. Again, any restriction proposed should be carefully limited to the particular mischief at which the council may desire to aim. The universal prohibition of street employment of girls would have the effect of preventing a farmer's daughter going round with a cart selling milk or butter in a country town, or preventing children of costermongers assisting their parents in street selling under conditions which are no worse than the conditions under which they live at home.

Street trading by young persons is already regulated in some large towns (Liverpool, Manchester, Bolton, Huddersfield, Halifax, Swansea, etc.) under powers similar to those in section 2, which have been obtained in local Acts; and a set of draft byelaws based on the byelaws actually in force in those towns has been drawn up for the guidance of councils who may have to deal with conditions similar to those of Liverpool, etc. In other places where street trading is carried on on a smaller scale and under less harmful conditions the restrictions imposed would naturally be fewer and simpler.

Byelaws Varying Hours of Employment under Section 3 (1).

Power is given to the council to vary by byelaw the hours of employment fixed by section 3 (1) of the Act, either generally for all occupations in the council's district or for any specified occupation.

Under this power, the council may either shorten the period of employment fixed by the Act, or may alter the times at which employment may begin or end. For example, it may be found desirable in agricultural districts, where milking is done at an early hour by children, to vary the morning hour from six to five (see Report of Committee, p. 11). Where, however, an earlier hour is fixed in the morning for commencement of employment it will be desirable as a general rule that a correspondingly earlier hour should be fixed for the termination of employment in the evening; and similarly, when a later hour is fixed in the evening, a correspondingly later hour should be fixed in the morning.

Two draft forms which byelaws under this heading might take have been prepared and are enclosed.

Byelaws under Prevention of Cruelty to Children Act.

Section 4 (6) provides that byelaws under section 2 of the Prevention of Cruelty to Children Act, 1894 which are at present made by the borough and district councils subject to the procedure of the Public Health Act, 1875, are for the future to be made by the same authority, and confirmed in the same way, as byelaws under the present Act (n). Except, therefore, in the case of municipal boroughs with a population of over 90,000 and of other urban districts with a population of over 20,000, the councils of which are authorities under the present Act, the county council will be the authority for byelaws under the Act of 1894.

Section 2 of the Act of 1894 makes it an offence to cause, procure, or allow any boy under 14 or girl under 16 to be in any street or licensed premises (other

(n) See now Prevention of Cruelty to Children Act, 1904, *ante*, p. 2042.

than premises licensed for public entertainments) between 9 p.m. or 6 a.m. for the purpose of singing, playing, or performing for profit, or offering anything for sale, but power is given by byelaw to restrict or extend those hours either on every day or any specified day or days of the week, and either as to the whole of the district or as to any specified area therein.

Confirmation of Byelaws.

All byelaws made under the Act will require the confirmation of the Secretary of State before they can come into force, and may not be confirmed until at least 30 days after they have been published by the council in such manner as the Secretary of State may direct. Before confirming any byelaw the Secretary of State is required to consider any objections from persons affected, and may, if he thinks it desirable, order a local inquiry to be held.

The Secretary of State has made a general order as to the manner in which byelaws are to be published before confirmation, and a copy is enclosed (*o*), for the information of the council.

It is most desirable, as in the case of other byelaws submitted to the Secretary of State, that all byelaws should be submitted to him in draft before being formally passed by the council. This course enables the terms of a byelaw to be settled beforehand and avoids any necessity of withdrawing the byelaw after it has been finally adopted, and going through the whole procedure afresh in order to make small amendments.

Employment of Children in Public Entertainments.

Another power under the Prevention of Cruelty to Children Act, 1894, which is transferred to the council is that of enforcing the provisions of that Act in connection with the employment of children at theatres and public entertainments.

Under section 3 (*p*) of that Act, as re-enacted and amended by this Act (section 11), the restrictions (*q*) which are imposed on the employment of children in places of public entertainment or amusement, and on the training of persons under 16 as acrobats, etc., are not to apply in the case of those above the age of 10, if they are licensed by a petty sessional court—the court having power to attach such restrictions or conditions to the licence as it thinks fit. The duty of seeing that any such restrictions or conditions were duly complied with has hitherto rested with the inspectors of factories. Under section 11 of the present Act it is not given to the inspectors or other officers of the local authority, who are entrusted with all the powers of entering, inspecting, and examining any place of public entertainment which were conferred on the factory inspectors by the Act of 1894. To enable the council's officers effectively to discharge this duty, the Secretary of State has given instructions to the factory inspectors to forward to the council without delay the copy of any licence granted which is forwarded to them under the requirement in section 3 (4) of the Act of 1894.

Enforcement of Act and Byelaws.

It will be desirable that the council, as the authority charged with the enforcement of the Act, and of any byelaws made under it, should consider at an early

(*o*) This order is printed on p. 2078.

(*p*) Section 3 is now superseded by s. 3 of the Prevention of Cruelty to Children Act, 1904.

(*q*) The restrictions which apply to the employment of unlicensed children in places of public entertainment, etc., are as follows :—

(1) No unlicensed child under 11 may be employed at any time in places of public entertainment or amusement (s. 2 (c) of Act of 1904).

(2) No unlicensed child under 14 may be employed in places of public entertainment or amusement after the hour of 9 p.m., or such other hour as may be fixed by the local authority by byelaw under s. 3 (1) of the Employment of Children Act, 1903 (s. 3 of that Act).

(3) No unlicensed person under 16 may be trained as an acrobat, etc. (s. 2 (d) of Act of 1904).

Appendix II. date the arrangements to be made by them for that purpose. In regard to some matters the best course will probably be to utilise the services of the police. This will especially be the case in regard to children engaged in street trading, whose occupation necessarily brings them directly under the notice of the police, and whose mode of carrying on their occupation so far as it may cause obstruction, annoyance, etc., has, in any case, to be dealt with by them. Where inspectors have been appointed to enforce the provisions of the Shop Hours Acts they will naturally be employed for the purpose of enforcing the provisions of this Act, and any byelaws made by the council, so far as they affect the employment of children in, or in connection with shops. Generally, the new duties arising under the Act will be closely akin to those discharged by the school attendance officers appointed by the council, and those officers will, from the nature of their duties, be able to render the greatest assistance to an inspector or officer appointed for the purpose of enforcing the Act and byelaws, if they are not themselves entrusted with the duty.

Provision is made by section 12 of the Act for meeting the expenses which are incurred by the council in carrying into effect the provisions of the Act, or any byelaws made thereunder.

I am, Sir, your obedient servant,
M. D. CHALMERS.

II.

SPECIMEN FORMS OF BYELAWS.

NOTE.—The following specimen byelaws cannot be adopted as a whole. They merely suggest convenient forms which any regulations the council decide to adopt may take. It will be observed that, in some instances, alternative forms are suggested.

EMPLOYMENT OF CHILDREN ACT, 1903.

I.—*Byelaws regulating Employment of Children.*

1. No child under the age of [12] shall be employed in [ ].

2. No boy under the age of [10] and no girl under the age of [12] shall be employed in [ ].

3. No child who is liable to attend school full time shall be employed in the [*selling or delivering of milk*] except between the hours of 6 and 8 in the morning and 4 and 6 in the afternoon.

4. No child who is liable to attend school half or full time shall be employed in the [*selling or delivering of newspapers*] except between the hours of 7.30 and 9 in the morning and 5 and 8 in the afternoon.

4A. No child who is liable to attend school full time shall be employed in the [*selling or delivering of newspapers*] except *either* between the hours of 7 and 9 in the morning *or* between the hours of 5 and 8 in the afternoon.

5. (1) No child who is liable to attend school full time shall be employed in [*any industrial work at home*] except between the hours of [5 and 8] in the afternoon.

(2) No child who is liable to attend school half time shall be employed in [*any industrial work at home*] except between the hours of 8 in the morning and 1 in the afternoon if attending school in the afternoon; or between the hours of 1 and 6 (on Saturdays 4) in the afternoon if attending school in the morning; nor for more than five hours on Saturday.

(*r*) (3) No child who is exempt from attendance at school shall be employed in [*any industrial work at home*] before the hour of [6] in the morning or after the hour of [9] in the evening (or on Saturday after the hour of 4 in the afternoon). Every child employed shall be allowed for meals and absence from

(*r*) The hours inserted in this form are those fixed by the Factory and Workshop Act, 1901, for employment of young persons in domestic factories and workshops. In cases where the work carried on is not such as constitute the home a domestic factory or workshop, it will be possible further to restrict the hours.

work between the said hours not less (except on Saturday) than [$4\frac{1}{2}$] hours, and on Saturday not less than [$2\frac{1}{2}$] hours. Appendix II.

(4) No child employed in [*any industrial work at home*] on any day shall be employed on the same day in any other occupation.

(5) No child shall be employed on Sunday in [*any industrial work at home*].

Industrial work shall mean any work in which manual labour is exercised by way of trade or for purposes of gain in making, altering, repairing, ornamenting, finishing, adapting for sale, or cleaning any article.

6. No boy who is liable to attend school full time shall be employed [*in carrying parcels*] except between the hours of 5 and 8 in the afternoon on week days other than Saturday, and *either* between 8 in the morning and 2 in the afternoon, *or* between 2 and 9 in the afternoon, on Saturday.

7. No child shall be employed, except as otherwise provided, in or in connection with any shop before 8 in the morning or after 8 in the evening, nor in the case of a child attending school at any time during, or in the interval between, school hours ; provided that if on one day in the week the shop closes not later than 2 in the afternoon, employment may be continued on one other day (to be specified in a notice kept constantly affixed in the shop) to 9 in the evening.

8. No child shall be employed [*as a lather boy or in a similar occupation in any barber's shop*].

9. No child employed in a place of public entertainment in pursuance of a licence under section 11 of the Act shall be employed on the same or following day in any other employment.

10. No child who is not wholly exempt from attendance at school shall be employed in any agricultural work during school term except between the hours [ ] in the months April to September, and except between the hours [ ] in the months October to March ; or in the holidays except between the hours [ ]

II.—*Byelaws regulating Street Trading* (*s*).

(a) *General Regulations.*

1. No child under the age of (*t*) shall be employed or engage in street trading.

2. No girl under the age of 16 shall be employed in or carry on street trading in or at the entrances to any railway station, nor in the following streets and public places :—[ ]

3. No person under the age of 16 shall be employed in or carry on street trading after [8 in the evening between 1st October and 31st March, or after 9 in the evening between 1st April and 30th September].

4. No person under the age of 16 engaged in street trading shall enter any premises licensed for public entertainment or for the sale of intoxicating liquor for consumption on the premises, for the purpose of trading or delivering goods .

5. [No child under 14 shall be employed or engage in street trading on Sunday.]

6. No child who is not exempt from school attendance shall be employed in or carry on street trading during school hours.

(b) *Regulations as to Licences.*

7. No person under 16 shall be employed or engage in street trading unless furnished with a licence from the council.

8. A licence to engage in street trading shall not be refused by the council to any person between the ages of [11] and 16 applying for it except on the ground

(*s*) In some few cases, byelaws—made under local Acts—have been approved which require street-trading children to be decently clad ; but approval has only been given when the Secretary of State has been satisfied that, through the agency of some charitable society, clothing can be supplied to really destitute children.

(*t*) The age fixed must not be lower than eleven, see s. 3 (2) of the Act.

Appendix II. that the applicant is by reason of physical or mental deficiency unfit to trade in the streets, or that he has not his parent's or guardian's consent to his being so employed.

9. Licences shall be granted for a period of one year only, and shall expire on [ ].

10. Every licensed person while trading in the streets shall wear in the appointed way the badge prescribed by the council.

11. No charge shall be made by the council for any licence or badge.

12. The council may suspend or revoke any licence if the holder is convicted of any offence; or commits any breach of these byelaws; or in any way defaces, lends, or parts with his badge.

III.—*Byelaws varying the Hours of Employment under Section* 3 (1).

1. The hours fixed by section 3 (1) of the Employment of Children Act, 1903 (*u*), for the employment of children shall be varied as follows for children employed in [ ]:—

The hour before which a child may not be employed in the morning shall be [seven].

The hour after which a child may not be employed in the evening shall be [eight].

2. The hours fixed by section 3 (1) of the Employment of Children Act, 1903, for the employment of children shall be varied as follows for children employed in [ ]:—

The hour before which a child may not be employed in the morning shall be [five]; and the hour after which a child may not be employed in the evening shall be [eight].

III.

ORDER OF THE SECRETARY OF STATE.

ORDER, DATED NOVEMBER 11TH, 1903, MADE BY THE SECRETARY OF STATE, UNDER SECTION 4 OF THE EMPLOYMENT OF CHILDREN ACT, 1903, DIRECTING MODE OF PUBLICATION OF BYELAWS.

In pursuance of section 4 (1) of the Employment of Children Act, 1903, I hereby direct that the publication required by that section shall take place as follows:—

1. Every byelaw shall be advertised at least once in two newspapers circulating in the district or districts in which the byelaw is to apply.

2. A notice of every byelaw shall be posted up in streets and public places where it is likely to be seen by persons affected, and in such manner that the same can be easily read.

3. In the case of any byelaw regulating or prohibiting the employment of children in a particular trade or occupation, a notice thereof shall also so far as practicable be distributed to all persons engaged in that trade or occupation; provided that the non-receipt of a notice by any person shall not prevent the confirmation of the byelaw.

4. Every advertisement or notice as aforesaid shall state the full terms of the byelaw and shall also state that objections in writing to the byelaw may be made by any person affected to the Secretary of State and addressed to him at the Home Office, London.

A. AKERS-DOUGLAS,

One of His Majesty's Principal Secretaries of State.

Whitehall,
11*th November*, 1903.

(*u*) In byelaws applying to children singing, playing, performing for profit or selling in the streets, the words "and section 2 (**b**) of the Prevention of Cruelty to Children Act, 1904," should be added.

FACTORIES AND WORKSHOPS. (x)

LIMEWASHING, ETC.

ORDER OF THE SECRETARY OF STATE, DATED NOVEMBER 2ND, 1903, GRANTING SPECIAL EXCEPTIONS :—LIMEWASHING, ETC.

1903. No. 934.

In pursuance of the powers conferred on me by section 1 (4) of the Factory and Workshop Act, 1901, I hereby grant to the factories and parts of factories named in the Schedules to this Order a special exception that the provisions in sub-section 3 of the said section with respect to limewashing or washing shall not apply thereto :—

Provided—

(1) that the special exception shall not apply to any part of a factory included in Schedule A which does not afford clear 500 cubic feet, or to any part of a factory included in Schedule B which does not afford clear 2,500 cubic feet, for each person employed therein ;

(2) that the exception shall not apply to mess rooms, engine-houses, fitting shops, or sanitary conveniences, except as regards walls or tops made of glazed bricks, tiles, glass, slate, marble, or galvanized iron, and washed with water and soap once at least within every 14 months ;

(3) that nothing in this Order shall be taken to affect the obligation of keeping the factory in a cleanly state, as prescribed by sub-section (1) of the said section ;

(4) that if it appear to an inspector that any part of a factory to which the exception applies is not in a cleanly state, he may, by written notice, require the occupier to limewash or wash the same ; and in the event of the occupier failing to comply with such requisition within two months from the date of the notice, the special exception shall cease to apply to such part of a factory.

The Orders of 16th November, 1895, 8th February, 1896, and 26th March, 1902, are hereby revoked.

This Order shall come into force on 1st January, 1904.

A. AKERS-DOUGLAS,
His Majesty's Principal Secretary of State for the Home Department.

Home Office, Whitehall,
2nd November, 1903.

SCHEDULE A.

Blast furnaces ; iron mills ; copper mills ; stone, slate and marble works ; brick and tile works in which unglazed bricks or tiles are made ; cement works ; chemicalworks ; gas works ; flax scutch mills in which neither children nor young persons are employed ; sugar factories. The following parts of factories : rooms used for the storage of articles, and not for the constant carrying on therein of any manufacturing process ; parts in which dense steam is continuously evolved in the process of manufacture ; parts in which pitch, tar, or like material is used, except in brush works ; parts in which unpainted or unvarnished wood is manufactured ; the part of a glass factory known as the glass house ; parts in which there are no glazed windows in the walls or roof ; walls, or tops of rooms, which are made by glazed bricks, tiles, glass, slate, marble, or galvanized iron, on condition that they are washed with water and soap once at least within every 14 months ; tops of rooms, which are at least 20 feet from the floor ; tops of rooms—(1) in print works, bleach works, or dye works, with the exception of finishing rooms or warehouses ; or (2) in grist mills ; or (3) in works in which are carried on the processes of : agricultural implement making ; coach making ; engraving ; manufacture of starch, soap, candles ; salting, tanning, or dressing of hides and skins.

(x) Reference may be made to an elaborate memorandum (March, 1912) (too long to be here printed) issued by the Home Office with respect to the Duties of Local Authorities under the Factory and Workshop Acts and the structural requirements of those Acts.

Appendix II.

SCHEDULE B.

Shipbuilding works, gun factories, engineering works, electric generating works, frame dressing rooms of lace factories, foundries other than foundries in which brass casting is carried on.

CUBIC SPACE.

ORDER OF SECRETARY OF STATE, DATED JANUARY 17TH, 1902, MODIFYING THE PROPORTION OF CUBIC FEET OF SPACE IN WORKSHOPS USED AS SLEEPING PLACES.

1902. No. 23.

In pursuance of the power conferred on me by sub-section (3) of section 3 of the Factory and Workshop Act, 1901, I hereby direct that, where a workshop other than a domestic workshop is occupied by day as a workshop and by night as a sleeping place, the proportion of cubic feet of space prescribed in sub-section (1) of the said section shall be modified by substituting "four hundred" for "two hundred and fifty," and accordingly such workshop shall, for the purposes of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein if the number of cubic feet of space in any room bears to the number of persons employed at one time in the room a proportion less than four hundred cubic feet to each person.

CHAS. T. RITCHIE,
One of His Majesty's Principal Secretaries of State.

Home Office, Whitehall,
17*th January*, 1902.

ORDER OF THE SECRETARY OF STATE, DATED DECEMBER 30TH, 1903, MODIFYING THE PROPORTION OF CUBIC FEET OF SPACE TO BE PROVIDED IN CERTAIN BAKEHOUSES.

1903. No. 1157.

In pursuance of the power conferred on me by sub-section (2) of section 3 of the Factory and Workshop Act, 1901, I hereby direct that the proportion of cubic feet of space to each person employed prescribed in sub-section (1) of the said section shall be modified

(1) As regards UNDERGROUND BAKEHOUSES by substituting "five hundred cubic feet of space to every person" for two hundred and fifty cubic feet of space to every person"; and

(2) As regards BAKEHOUSES (other than such as are underground) WHERE WORK IS CARRIED ON AT NIGHT BY ARTIFICIAL LIGHT OTHER THAN ELECTRIC LIGHT by substituting in respect of the period between 9 in the evening and 6 in the succeeding morning "four hundred cubic feet of space to every person" for "two hundred and fifty cubic feet of space to every person."

This Order shall come into force on the 1st day of January, 1904.

A. AKERS-DOUGLAS,
One of His Majesty's Principal Secretaries of State.

Home Office, Whitehall,
30*th December*, 1903.

VENTILATION.

ORDER OF THE SECRETARY OF STATE, DATED FEBRUARY 4TH, 1902, PRESCRIBING A STANDARD OF VENTILATION FOR CERTAIN HUMID TEXTILE FACTORIES OTHER THAN COTTON CLOTH FACTORIES.

1902. No. 79.

In pursuance of the powers conferred on me by section 7 of the Factory and Workshop Act, 1901, I hereby prescribe that the means of ventilation

to be provided and maintained in every textile factory, not being a cotton cloth factory, in which atmospheric humidity is artificially produced by steaming or other mechanical appliances, and in which special rules or regulations with respect to humidity are not for the time being in force, shall be such as to supply during working hours not less than 600 cubic feet of fresh air per hour for each person employed.

CHAS. T. RITCHIE,

One of His Majesty's Principal Secretaries of State.

Home Office, Whitehall,
4th February, 1902.

SANITARY ACCOMMODATION.

THE SANITARY ACCOMMODATION ORDER OF FEBRUARY 4TH, 1903.

1903. No. 89.

In pursuance of section 9 of the Factory and Workshop Act, 1901, I hereby determine that the accommodation in the way of sanitary conveniences provided in a factory or workshop shall be deemed to be sufficient and suitable within the meaning of the said section if the following conditions are complied with and not otherwise :—

1. In factories or workshops where females are employed or in attendance there shall be one sanitary convenience for every 25 females.

In factories or workshops where males are employed or in attendance there shall be one sanitary convenience for every 25 males ; provided that—

(a) In factories or workshops where the number of males employed or in attendance exceeds 100, and sufficient urinal accommodation is also provided, it shall be sufficient if there is one sanitary convenience for every 25 males up to the first 100 ; and one for every 40 after ;

(b) In factories or workshops where the number of males employed or in attendance exceeds 500, and the district inspector of factories certifies in writing that by means of the check system, or otherwise, proper supervision and control in regard to the use of the conveniences are exercised by officers specially appointed for that purpose it shall be sufficient if one sanitary convenience is provided for every 60 males, in addition to sufficient urinal accommodation. Any certificate given by an inspector shall be kept attached to the general register, and shall be liable at any time to be revoked by notice in writing from the inspector.

In calculating the number of conveniences required by this Order, any odd number of persons less than 25, 40, or 60, as the case may be, shall be reckoned as 25, 40, or 60.

2. Every sanitary convenience shall be kept in a cleanly state, shall be sufficiently ventilated and lighted, and shall not communicate with any work-room except through the open air or through an intervening ventilated space : provided that in work-rooms in use prior to 1st January, 1903, and mechanically ventilated in such manner that air cannot be drawn into the work-room through the sanitary convenience, an intervening space shall not be required.

3. Every sanitary convenience shall be under cover and so partitioned off as to secure privacy, and if for the use of females shall have a proper door and fastenings.

4. The sanitary conveniences in a factory or workshop shall be so arranged and maintained as to be conveniently accessible to all persons employed therein at all times during their employment.

5. Where persons of both sexes are employed, the conveniences for each sex shall be so placed or so screened that the interior shall not be visible, even when the door of any convenience is open, from any place where persons of the other sex have to work or pass ; and, if the conveniences for one sex adjoin those for the other sex, the approaches shall be separate.

Appendix II.

6. This Order shall come into force on the 1st day of July, 1903.

7. This Order may be referred to as the Sanitary Accommodation Order of 4th February, 1903.

A. AKERS-DOUGLAS,

One of His Majesty's Principal Secretaries of State.

Home Office, Whitehall,
4th February, 1903.

SPECIAL CONDITIONS FOR FRUIT PRESERVING.

ORDER DATED SEPTEMBER 11TH, 1907.

1907. No. 728.

In pursuance of sections 41 and 58 of the Factory and Workshop Act, 1901, I hereby order that the following conditions shall be observed in factories and workshops in which women or young persons are employed in the process of cleaning or preparing fruit in pursuance of the special exception allowed by section 41 :—

Provided that the conditions prescribed in paragraphs 1, 2, 3 (e), 3 (f), and 4 shall not take effect until June 1st, 1908.

1. There shall be sufficient and suitable sanitary accommodation for the use of all persons employed, as defined in the Special Order made by the Secretary of State under section 9 of the Factory and Workshop Act, 1901.

2. There shall be sufficient and suitable washing accommodation for the use of all persons employed in cleaning or preparing fruit.

3. In each room in which women or young persons are employed in pursuance of the special exception :—

(a) There shall be not less than 400 cubic feet of air space for each person employed in the room.

(b) If any process is carried on which entails the giving off of steam, a fan or other efficient means shall be maintained and used for the removal of steam at or near to the point of origin.

(c) A thermometer shall be kept affixed.

(d) The floors shall be maintained in good condition ; and, if any wet process is carried on, so drained as to carry the wet away from the workers.

(e) The walls and ceilings shall once in every six months be limewashed, or, if the surface be such as not to admit of limewashing, washed.

(f) There shall be adequate lighting.

4. No woman or young person shall be employed in pursuance of the special exception unless and until the occupier holds a certificate from the inspector of the district, to the effect that provision has been made to his satisfaction for compliance with the foregoing requirements of this Order, for the maintenance of reasonable temperature, and for ventilation.

Such certificate shall be in writing, and shall be kept attached to the general register, and shall be revocable at any time by one week's notice in writing from the inspector of the district.

5. No young person shall be employed to lift, carry, or move any weight so heavy as to be likely to cause injury to such young person.

6.—(a) No woman or young person shall be employed before six o'clock in the morning or after ten o'clock in the evening.

(b) In the case of young persons, a period of not less than ten hours shall elapse between the termination of work on one day and the commencement of work on the following day.

7. No woman or young person shall be employed continuously for more than five hours without an interval of at least half an hour.

8. There shall be an interval of one hour at least, either at the same time or at different times, before three o'clock in the afternoon.

9. No woman or young person shall be employed in pursuance of the exception who has since the first day of October last preceding been employed by the same occupier outside the ordinary period of employment in pursuance of any other special exception.

Appendix II.

10. The occupier shall each year, before employing any person in pursuance of the special exception, enter in the prescribed notice, which shall be kept affixed in the factory or workshop, the name of such person, and whether under 16, under 18, or over 18 years of age, and a declaration that such person has not been employed outside the ordinary period of employment in pursuance of any other special exception since the first day of October last preceding.

11. On every day on which a woman or young person is employed in pursuance of the special exception, the occupier shall enter in the prescribed register, and report to the inspector of the district in the prescribed form, the hour at which the fruit arrived at the factory or workshop, the processes on which women or young persons were employed in pursuance of the exception, the periods of employment of such women and young persons, and the intervals allowed them for meals.

12. The Order of 17th June, 1902, is hereby repealed.

H. J. GLADSTONE,
One of His Majesty's Principal Secretaries of State.

Whitehall,
11*th September*, 1907.

CONDITIONS OF EMPLOYMENT IN CASES OF SPECIAL EXCEPTIONS.

ORDER OF THE SECRETARY OF STATE, DATED DECEMBER 20TH, 1882 (*y*), IMPOSING CONDITIONS OF EMPLOYMENT IN CASES OF SPECIAL EXCEPTIONS.

Whereas the Factory and Workshop Act, 1878 (*z*), part 2, section 63, provides as follows:—

Where it appears to the Secretary of State, that the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of any child, young person, or woman employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act, or at night, he may by order made under this part of this Act direct that the adoption of such means or provisions shall be a condition of such employment:

An whereas it appears to me that special means or provisions for the ventilation of factories and workshops is required for the protection of the health of the young persons and women employed in pursuance of an exception made under part 2, section 53, of the said Act for a longer period than is otherwise allowed by the said Act:

Now I, the Right Honourable Sir William Vernon Harcourt, one of Her Majesty's principal Secretaries of State, by this Order, made under the said sixty-third section, direct that it shall be a condition of the employment in any factory or workshop mentioned in Part III. of Schedule III. to the same Act of any young person or woman, in pursuance of an exception under the said fifty-third section, that there shall be a cubic space of at least four hundred feet for every young person and woman so employed.

This Order shall come into effect on 1st January, 1883, and shall continue in force until revoked.

W. V. HARCOURT.

Whitehall,
20*th December*, 1882.

(*y*) So far as the Factories are concerned, s. 3 of the Factory and Workshop Act, 1901, has superseded the provisions of the Order. In the case of workshops, however, the effect of that section is not to supersede the Order, but to give to the local authority a co-ordinate power to deal with overcrowding under the law relating to public health; the Order, therefore, remains in full force so far as regards workshops, and the condition which it imposes on the working of overtime in workshops is enforceable by the factory inspectors.

(*z*) 41 & 42 Vict. c. 16; now see s. 58 of the Factory and Workshop Act, 1901.

Appendix II.

HOME WORK.

THE HOME WORK ORDER OF 23RD MAY, 1907.

1907. No. 408.

1. In pursuance of sections 107, 108, and 110 of the Factory and Workshop Act, 1901, I hereby make the following Order :—

I. Section 107 (relating to lists of out-workers) and section 108 (relating to employment in unwholesome premises) shall apply to the following classes of work :—

The making, cleaning, washing, altering, ornamenting, finishing, and repairing of wearing apparel ; the making, ornamenting, mending, and finishing of lace and of lace curtains and nets ; cabinet and furniture making and upholstery work ; the making of electro-plate ; the making of files ; fur-pulling ; the making of iron and steel cables and chains ; the making of iron and steel anchors and grapnels ; the making of cart gear, including swivels, rings, loops, gear buckles, mullin bits, hooks, and attachments of all kinds ; the making of locks, latches, and keys ; the making or repairing of umbrellas, sunshades, parasols, or parts thereof ; the making of artificial flowers ; the making of nets other than wire nets ; the making of tents ; the making or repairing of sacks ; the covering of racquet or tennis balls ; the making of paper bags ; the making of boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, chip, or similar material ; the making of brushes ; pea picking ; feather sorting ; the carding, boxing, or packeting of buttons, hooks and eyes, pins, and hair pins ; the making of stuffed toys ; the making of baskets ; and any process incidental to the above.

II. Section 110 (relating to the prohibition of home work in places where there is infectious disease) shall apply to the following classes of work :—

The making, cleaning, washing, altering, ornamenting, finishing, and repairing of wearing apparel and any work incidental thereto (as in the said section specified) ; the making, ornamenting, mending, and finishing of lace and of lace curtains and nets ; upholstery work ; fur-pulling ; the making or repairing of umbrellas, sunshades, parasols, or parts thereof ; the making of artificial flowers ; the making of nets other than wire nets ; the making of tents ; the making or repairing of sacks ; the covering of racquet or tennis balls ; the making of paper bags ; the making of boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, chip, or similar material ; the making of brushes ; pea picking ; feather sorting ; the carding, boxing, or packeting of buttons, hooks and eyes, pins, and hair pins ; the making of stuffed toys ; the making of baskets ; and any processes incidental to the above.

2. The lists of out-workers required to be kept by section 107 and the copies thereof shall be kept and made in the form and manner and with the particulars shown in the schedule hereto.

3. This Order may be referred to as the Home Work Order of the 23rd May, 1907.

4. The Home Work Order of the 15th August, 1905, is hereby revoked.

H. J. GLADSTONE,
One of His Majesty's Principal Secretaries of State.

Home Office, Whitehall,
23*rd May*, 1907.

SCHEDULE.

LIST OF OUT-WORKERS.

A correct list of out-workers employed in the following classes of work—

(a) the making, cleaning, washing, altering, ornamenting, finishing, and repairing of wearing apparel ; (b) the making, ornamenting, mending, and finishing of lace and of lace curtains and nets ; (c) cabinet and furniture making and upholstery work ; (d) the making of electro-plate ; (e) the making of files ; (f) fur-pulling ; (g) the making

Appendix II.

of iron and steel cables and chains; (h) the making of iron and steel anchors and grapnels; (i) the making of cart gear, including swivels, rings, loops, gear buckles, mullin bits, hooks, and attachments of all kinds; (j) the making of locks, latches, and keys; (k) the making or repairing of umbrellas, sunshades, parasols, or parts thereof; (l) the making of artificial flowers; (m) the making of nets other than wire nets; (n) the making of tents; (o) the making or repairing of sacks; (p) the covering of racquet or tennis balls; (q) the making of paper bags; (r) the making of boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, chip, or similar material; (s) the making of brushes; (u) pea picking; (v) feather sorting; (w) the carding, boxing, or packeting of buttons, hooks and eyes, pins, and hair pins; (x) the making of stuffed toys; (y) the making of baskets; (z) and any processes incidental to the above;

must be kept in the form and with the particulars specified below in the factory or workshop or place from which the work is given out, and must be open to inspection by H.M. inspectors and the officers of the local authority; and a copy of the list signed and dated and corrected up to that date must be forwarded to the local authority of the district on or before the first day of February and on the first day of August in each year.

In order that the list may be correct, the name of any person newly taken into employment should be immediately entered, and the name of any person ceasing to be employed should be immediately struck out.

Factory, Workshop, or Place from which the work is given out } Full Postal Address________
Business________
Name of Occupier________

LIST OF PERSONS directly employed by (a) (b) in the business of, but outside, the above Factory, Workshop, or place, in the classes of work specified above.

(a) Give name of employer.
(b) Say whether the occupier or a contractor employed by the occupier.

Name in full.	Whether employed as Workman (W) or Contractor (C).	Class of work. (Specify by means of index letters as above.)	Place of Employment, *i.e.* place where the work is actually done.	Address. [*No entry need be made in this column if the entry in column (4) is a sufficient address.*]
1.	2.	3.	4.	5.

FOOD AND DRUGS.

See also "DAIRIES, ETC.," *ante*, p. 2260.

Reference may also be made to the following official publications: A Circular (December 17th, 1913) as to the administration of the Sale of Food and Drugs Acts and Analysts' reports thereunder; a Circular (October 27th, 1913) as to the administration of the Milk and Cream Regulations, 1912; various other Circulars (December 12th, 1908; January 26th, 1909; April 29th, 1909; July 26th, 1909; September 30th, 1909, and November 12th, 1910) as to the regulations made under the Public Health (Regulations as to Food) Act, 1907, giving details (*inter alia*) of the various "official certificates" recognised. These Circulars will be found in the Local Government volumes edited by A. and K. M. Macmorran (Butterworth & Co.).

Appendix II.

REGISTRATION OF MANUFACTORIES OF MARGARINE AND MARGARINE-CHEESE—GENERAL ORDER.

TO THE OWNERS AND OCCUPIERS for the time being of manufactories of and to the wholesale dealers in, margarine or margarine-cheese in England and Wales; To the several local authorities under the Margarine Act, 1887, and the Sale of Food and Drugs Act, 1899, for the time being in England and Wales; And to others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (*a*) (hereinafter referred to as "the Act of 1887"), provision was made for the registration of every manufactory of margarine in England and Wales by the owner or occupier thereof with the local authority from time to time in such manner as we, the Local Government Board, might direct;

And whereas by an Order dated the 22nd day of December, 1887 (hereinafter referred to as "the Order of 1887"), we directed the manner of registration under the Act of 1887 of every such manufactory of margarine;

And whereas by section 5 of the Sale of Food and Drugs Act, 1899 (*b*) (hereinafter referred to as "the Act of 1889"), it is enacted that the provisions of the Act of 1887, as amended by the Act of 1899, shall extend to margarine-cheese as defined by that Act, and shall apply accordingly with the substitution of "margarine-cheese" for "margarine";

And whereas by sub-section (4) of section 7 of the Act of 1899 (*c*) it is enacted that the provisions of section 9 of the Act of 1887 relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on:

Now therefore, we, the Local Government Board, hereby order and direct as follows:

Art. 1. This Order shall come into operation forthwith, and shall remain in force until we shall otherwise direct; and the order of 1887 is hereby rescinded: Provided that in every case where a manufactory of margarine, or an owner or occupier carrying on the manufacture of margarine has been duly registered, and such registration has effect at the date of this Order, such registration shall, notwithstanding the rescission of the Order of 1887 but subject to the provisions of Article 4 of this Order, continue to have effect: Provided also, that any book which prior to the date of this Order has been used by a local authority in pursuance of the Order of 1887 for purposes of registration shall, so far as such book contains any entry applicable to any such case as aforesaid, be deemed to be part of the register of the local authority for the purposes of this Order.

Art. 2. Every owner or occupier of a manufactory of and every wholesale dealer in margarine or margarine-cheese in England and Wales who shall make application to the proper local authority for a certificate of registration under the Act of 1887 and the Act of 1899, or under either of the said Acts, shall, in his application, state the following particulars:

(a) The name and address of the owner or occupier or wholesale dealer making the application.

(b) The situation of the manufactory, or of the premises wherein the business of the wholesale dealer is carried on.

(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business.

Every such application shall be signed by the person making the same, or by someone acting on his behalf.

Art. 3. If the application is in due form, the local authority shall cause the manufactory, or the premises, as the case may be, to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form (A.) set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

(*a*) *Ante*, p. 1803. (*b*) *Ante*, p. 1969. (*c*) *Ante*, p. 1970.

Appendix II.

Art. 4. Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the manufactory, or by the wholesale dealer carrying on the business, to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form (B.) set forth in the said Schedule.

SCHEDULE.

FORM (A.)

CERTIFICATE UNDER THE MARGARINE ACT, 1887,
(50 & 51 Vict. c. 29),
[*or*] [*and*]
[the Sale of Food and Drugs Act, 1899,
(62 & 63 Vict. c. 51)].

This is to certify that the manufactory [*or* premises *or both, as the circumstances require*] known as , situate at , at which the manufacture of [*or* business of a wholesale dealer in, *or both, as the circumstances require*] margarine [*or* margarine-cheese, *or both, as the circumstances require*] is [*or* are] at present carried on by [*name of the owner or occupier*] the owner [*or* occupier] thereof, has [*or* have] been duly registered by [*the name of the local authority within whose district the manufactory or premises is or are situate*] in accordance with the provisions of the Margarine Act, 1887 [*or* Sale of Food and Drugs Act, 1899, *or both, as the circumstances require*] in that behalf, on the application of [*name of applicant*].

Dated this day of , in the year one thousand nine hundred .

Signed ,
Clerk to the [*here insert name of local authority*].

FORM (B.)

Endorsement on certificate in case of change in persons carrying on the manufacture or business .

This is to certify that has been duly registered as the owner [*or* occupier], carrying on the manufacture of [*or* business of a wholesale dealer in, *or both, as the circumstances require*] margarine [*or* margarine-cheese, *or both, as the circumstances require*] in the within-named manufactory [*or* premises, *or both, as the circumstances require*], in the place of .

Dated this day of , in the year one thousand nine hundred .

Signed ,
Clerk to the [*here insert name of local authority*].

Given under the Seal of Office of the Local Government Board, this twenty-sixth day of February, in the year one thousand nine hundred.

(L.S.) HENRY CHAPLIN, *President*.

S. B. PROVIS, *Secretary*.

REGISTRATION OF BUTTER FACTORIES, AND OF FACTORIES, OF AND DEALERS IN MILK-BLENDED BUTTER—GENERAL ORDER.

TO THE OWNERS AND OCCUPIERS for the time being of butter factories and of premises on which there is manufactured milk-blended butter, and to the wholesale dealers in milk-blended butter in England and Wales; To the several local authorities under the Margarine Act, 1887, the Sale of Food and Drugs Act, 1899, and the Butter and Margarine Act, 1907, for the time being in England and Wales; And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (hereinafter referred to as "the Act of 1887"), as extended by section 7 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act of 1899"), provision was made for the registration of every manufactory of margarine and of all premises wherein the manufacture of margarine or the business of a wholesale dealer in margarine is carried on in England and Wales with the local authority from time to time in such manner as we, the Local Government Board, might direct;

And whereas by section 1 of the Butter and Margarine Act, 1907 (hereinafter referred to as "the Act of 1907"), it is enacted that the provision aforesaid shall apply to butter factories and to any premises on which milk-

Appendix II. blended butter is manufactured or on which the business of a wholesale dealer in milk-blended butter is carried on:

Now therefore, we, the Local Government Board, hereby order and direct as follows :—

ART. 1. Every owner or occupier of a butter factory or of premises on which there is manufactured any milk-blended butter, or on which there is carried on the business of a wholesale dealer in milk-blended butter in England and Wales who shall make application to the proper local authority for a certificate of registration under the Act of 1887 as amended by the Act of 1899 and the Act of 1907, shall, in his application, state the following particulars :—

(a) The name and address of the owner or occupier making the application;
(b) The situation of the factory, or of the premises on which the manufacture, or the business of the wholesale dealer, is carried on ;
(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business ;
(d) Whether the premises are proposed to be registered as—
  (i.) a butter factory ; or
  (ii.) premises on which there is manufactured any milk-blended butter ; or
  (iii.) premises on which there is carried on the business of a wholesale dealer in milk-blended butter.

The application shall be signed by the person making the same, or by someone acting on his behalf.

ART. 2. If the application is in due form, the local authority shall cause the factory, or the premises, as the case may be, to be registered by entering in a book the particulars of the application for registration ; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ART. 3. Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the butter factory, or of the premises on which the manufacture of milk-blended butter or the business of a wholesale dealer in milk-blended butter, as the case may be, is carried on, to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority in the certificate in accordance with the Form B. set forth in the said Schedule.

SCHEDULE.

FORM A.

CERTIFICATE UNDER THE MARGARINE ACT, 1887.
50 & 51 Vict. c. 29,
as amended by
THE SALE OF FOOD AND DRUGS ACT, 1899,
62 & 63 Vict. c. 51,
and
THE BUTTER AND MARGARINE ACT, 1907,
7 Edw. 7, c. 21.

Directions for filling up this Certificate.

Insert—
1 "Factory" *or* "premises" or both, as the circumstances require.
2 "Manufacture of" *or* "business of a wholesale dealer in," or both, as the circumstances require.
3 "Butter" *or* "Milk-blended Butter," or both, as the circumstances require.
4 Name of the owner or occupier.
5 "Owner" *or* "occupier."
6 The name of the local authority within whose district the manufactory or premises is or are situate.
7 Name of applicant.

This is to certify that the [1] ______
known as ______
situate at ______
at or on which the [2] ______
[3] ______
is [*or* are] at present carried on by [4] ______
the [5] ______ thereof,
has [*or* have] been duly registered by [6] ______
in accordance with the provisions of the Margarine Act, 1887, and the Butter and Margarine Act, 1907, in that behalf, on the application of [7] ______
______.

Dated this ______ day of ______, in the year One thousand nine hundred and ______.

Signed ______,
Clerk to the [*here insert name of Local Authority*].

FORM B.

Appendix II.

Endorsement on certificate in case of change in persons carrying on the manufacture or business____________.

This is to certify that____________has been duly registered as the [1]____________carrying on the [2]____________ [3]____________at or on the within-named [4]____________ in the place of____________.

Dated this______day of____________, in the year One thousand nine hundred and______.

Signed____________,

Clerk to the [*here insert name of Local Authority*].

Directions for filling up this Certificate.

Insert—
[1] "Owner" *or* "occupier."
[2] "Manufacture of" *or* "business of a wholesale dealer in," or both, as the circumstances require.
[3] "Butter" or "Milk-blended Butter," or both, as the circumstances require.
[4] "Factory" *or* "premises," or both, as the circumstances require.

Given under the Seal of Office of the Local Government Board, this twenty-eighth day of December, in the year one thousand nine hundred and seven.

(L.S.) JOHN BURNS, *President.*

S. B. PROVIS, *Secretary.*

SALE OF BUTTER REGULATIONS, 1902 (for these see *ante*, p. 1968).

SALE OF MILK REGULATIONS, 1901—1912 (for these see *ante*, p. 1967).

MILK AND CREAM REGULATIONS, 1912.

TO THE SEVERAL LOCAL AUTHORITIES in ENGLAND AND WALES for the time being authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907; To Officers of Customs and Excise; To the Principal Chemist of the Government Laboratories; To Medical Officers of Health; To Public Analysts; To Dairymen, and to Wholesale and Retail Dealers in Milk and Cream; And to all others whom it may concern.

WHEREAS by section 1 of the Public Health (Regulations as to Food) Act, 1907 [*the section* (*see* ante, *p.* 1095), *is set out*].

And whereas we, the Local Government Board, are empowered by regulations made under the Public Health Act, 1896, and the enactments mentioned in that Act, to provide for the regulations being enforced and executed by the officers of Customs and Excise, as well as by other authorities and officers, and sub-section 2 (a) of section 1 of the Public Health Act, 1896, requires that the regulations shall be subject to the consent, so far as they apply to the officers of Customs and Excise, of the Commissioners of Customs and Excise;

And whereas in the exercise of our powers under the Public Health (Regulations as to Food) Act, 1907, we, by the Public Health (First Series: Unsound Food) Regulations, 1908, made regulations in relation to articles of food;

And whereas, for the prevention of danger arising to public health, it is expedient that such regulations as are hereinafter set forth be made in relation to Milk and Cream;

And whereas the Commissioners of Customs and Excise have signified their consent to the said regulations, so far as they apply to the officers of Customs and Excise:

NOW THEREFORE, we, the Local Government Board, by this our Order, and in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health (Regulations as to Food) Act, 1907, and of every other power enabling us in that behalf, do make the following regulations, that is to say:—

PART I.

ARTICLE I.—In these regulations, unless the contrary intention appears: Interpretation.

(a) The expression "preservative substance" means any substance, preparation, or solution which when added to milk or cream is capable

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of retarding the onset of sourness or decomposition, or is capable of neutralising acidity (sourness) in milk or cream, and the expression "thickening substance" means sucrate of lime, gelatine, starch paste, or any other substance which, when added to cream, is capable of increasing its thickness:

Provided that neither cane nor beet sugar shall be regarded as a preservative or as a thickening substance;

(b) The expression "milk" includes separated, skimmed, condensed and dried milk;

(c) The expression "cream" means that portion of milk rich in milk fat which has risen to the surface of milk on standing and has then been removed, or which has been separated from milk by centrifugal force;

(d) The expression "preserved cream" means cream containing 35 per cent. or more by weight of milk fat, to which has been added—

(i.) boric acid, borax or a mixture of those preservative substances, or

(ii.) hydrogen peroxide;

(e) The expression "seller" includes any person who exposes or offers for sale, or has in his possession for the purpose of sale;

(f) The expression "foreign" used in relation to milk, cream, or preserved cream means brought from a place situate elsewhere than in the United Kingdom, the Channel Islands, or the Isle of Man;

(g) The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, and the expression "public analyst" means an analyst so appointed;

(h) The expression "Unsound Food Regulations" means the Public Health (First Series: Unsound Food) Regulations, 1908;

(i) Other expressions have the same meaning, *mutatis mutandis*, as in the Unsound Food Regulations.

Commencement of regulations.

ARTICLE II.—Subject as provided in sub-division (1) of Article V. hereof these regulations shall come into operation on the first day of October, one thousand nine hundred and twelve.

PART II.

Prohibition of preservatives in milk.

ARTICLE III.—(1) No person shall add, or order or permit any other person to add, any preservative substance to milk intended for sale for human consumption.

(2) No person shall sell, or expose or offer for sale, or have in his possession for the purpose of sale, any milk to which any preservative substance has been added in contravention of the provisions of sub-division (1) of this article.

Restriction on the use of preservatives in cream.

ARTICLE IV.—(1) No person shall add, or order or permit any other person to add—

(a) any thickening substance to cream or preserved cream;

(b) any preservative substance to cream containing less than 35 per cent. by weight of milk fat;

(c) to cream containing 35 per cent. or more by weight of milk fat any preservative substance other than—

(i.) boric acid, borax or a mixture of those preservative substances; or

(ii.) hydrogen peroxide;

in any case in which the cream is intended for sale for human consumption.

(2) No person shall sell, or expose or offer for sale, or have in his possession for the purpose of sale, any cream to which any thickening substance or any preservative substance has been added in contravention of the provisions of sub-division (1) of this Article.

Declaration of preservatives in cream.

ARTICLE V.—(1) Every seller of preserved cream shall, in every advertisement, price list, or trade list which is used in connection with the sale of preserved cream for human consumption, describe that article as preserved cream, and in no such document shall any words be contained which might imply that

Appendix II.

the preserved cream is cream to which a preservative substance has not been added.

The provision in this sub-division of this article shall come into operation on the first day of January, one thousand nine hundred and thirteen.

(2) No seller of preserved cream shall deposit for sale in any place, or dispatch or deliver to any purchaser, or to any other person, any receptacle containing preserved cream intended for human consumption unless the receptacle is labelled in the manner prescribed in the schedule to these regulations, and unless, in the case of preserved cream containing boric acid, borax or a mixture of those preservative substances, the amount of those substances calculated as boric acid (H_3BO_3) is accurately stated as not exceeding the limit specified on the label in the manner prescribed in the said schedule:

Provided that if in any public refreshment room, restaurant, shop, or other public premises preserved cream is delivered to a purchaser or other person for consumption on the premises, the receptacle containing the preserved cream shall not be required to be labelled in accordance with the foregoing provisions if there is placed in a conspicuous position in every room on the premises in which customers are served with refreshments a notice, printed in large and easily legible type, indicating that the cream supplied for consumption on the premises is preserved cream, or if a statement to that effect is conspicuously made on every bill of fare exhibited to customers, or if by some other adequate means similar intimation is publicly given.

Powers and duties of local authority.

ARTICLE VI.—The local authority shall enforce and execute the regulations in this part of this Order, and for this purpose shall authorise the making of inquiries and the taking of any other steps which may seem to them to be necessary for securing the due observance of the regulations in their district:

Provided that before the local authority institute proceedings against any person for a contravention of any of the regulations in this part of this Order the local authority shall afford him an opportunity of furnishing an explanation in writing or otherwise as they may appoint, and shall duly consider any such explanation and all the circumstances of the case.

Samples.

ARTICLE VII.—Any of the officers named in section 13 of the Sale of Food and Drugs Act, 1875, may under the direction of the local authority appointing him procure for examination, in accordance with the provisions of section 14 of that Act (as amended by subsequent legislation), so far as the same may be applicable, samples of milk or cream or preserved cream, or of any article resembling milk or cream, or of any substance which appears to be intended for addition to milk or cream; and the owner or occupier of any premises on which there is deposited milk or cream or preserved cream intended for sale, or for preparation for sale, for human consumption, or the person having the custody thereof, shall afford to the officer or to any officer of the Local Government Board all reasonable facilities for entering the said premises for the purpose of taking samples or making inquiries or for any other purpose of the regulations in this part of this Order.

PART III.

Restrictions on importation.

ARTICLE VIII.—No person shall import into England or Wales:—

(a) any foreign milk to which any preservative substance has been added;
(b) any foreign cream to which any thickening substance has been added;
(c) any foreign cream containing less than 35 per cent. by weight of milk fat to which any preservative substance has been added;
(d) any foreign cream containing 35 per cent. or more by weight of milk fat to which has been added any preservative substance other than—
  (i.) boric acid, borax or a mixture of those preservative substances; or
  (ii.) hydrogen peroxide;
(e) any foreign preserved cream which is not contained in a vessel or receptacle duly labelled in the manner prescribed in the schedule to these regulations.

Powers and duties of officers of Customs and Excise.

ARTICLE IX.—(1) The officers of Customs and Excise shall enforce and execute the Regulations in this part of this Order and for this purpose shall,

Appendix II.

in accordance with directions given by the Treasury after consultation with us, take samples of consignments of imported milk or cream or articles resembling milk or cream.

(2) When any officer of Customs and Excise takes a sample in pursuance of sub-division (1) of this article he shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories and retain one part for future comparison.

(3) In any proceeding under this part of this Order the certificate of the principal chemist of the Government laboratories of the result of the analysis shall be sufficient evidence of the facts therein stated unless the defendant require that the person who made the analysis be called as a witness, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness unless he shall, at least three clear days before the return day, give notice to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction.

(4) If in any case the officer of Customs and Excise is of opinion that an offence has been committed under this part of this Order he shall communicate to us for our information the name of the importer and such other information as he possesses or may obtain as to the destination of the consignment.

PART IV.

Determination of differences.

ARTICLE X.—(1) If a difference arises in relation to any subject matter of, or to anything done under, these regulations, the difference may, on the application of all the parties affected, be referred to us for determination.

(2) It shall be at our option to determine any such difference as arbitrators or otherwise; and, if we elect to determine the difference as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were re-enacted in these regulations and in terms made applicable to us, and to the determination of the difference.

(3) Where we elect to determine any such difference otherwise than as arbitrators, we may by Order determine the difference, and our determination shall be final and conclusive.

(4) Every Order made by us in pursuance of this article shall have effect as if the Order were enacted in these regulations.

Powers to be cumulative.

ARTICLE XI.—All powers given by these regulations shall be deemed to be in addition to, and not in derogation of any other powers conferred by regulations under the Public Health (Regulations as to Food) Act, 1907; and those other powers may be exercised in the same manner as if these regulations had not been made.

Short title.

ARTICLE XII.—These regulations may be cited as "The Public Health (Milk and Cream) Regulations, 1912."

SCHEDULE.

REGULATIONS WITH RESPECT TO THE LABELLING OF PRESERVED CREAM.

1. Every receptacle containing preserved cream shall be labelled by the attachment thereto of an adhesive label, in this schedule referred to as the "declaratory label."

2. Every declaratory label shall be in the form and contain the information indicated in Label I. or Label II. set out in this schedule, as the case may require. Such information shall be printed in black type, of not less size than that shown in the said Label I. or Label II., upon a white ground in the centre of the declaratory label, and nothing else shall be printed on the declaratory label; except that in every case in which Label I. is used the maximum amount per cent. of boric acid (H_3BO_3) contained in the preserved cream shall be stated in figures on the declaratory label.

LABEL I.

PRESERVED CREAM
CONTAINING
BORIC ACID
NOT EXCEEDING
PER CENT.

LABEL II.

PRESERVED CREAM
(PEROXIDE).

3. The size of the declaratory label shall be determined as follows :— Appendix II.

Capacity of Receptacle.	Size of Label.
	Inches. Inches.
Not exceeding 1 pint	$\frac{3}{4}$ by $1\frac{3}{4}$
Exceeding 1 pint	3 by 5

4. The declaratory label shall be so attached to the receptacle that the whole of the label shall be visible and clearly legible, and the declaratory label shall not be overlapped by any other label or otherwise obscured.

5. The declaratory label shall not be affixed either over the mouth of the receptacle or beneath the receptacle.

6. Where on any receptacle containing preserved cream or on any wrapper or package in which such receptacle is enclosed, there appears any reference by label (other than the declaratory label) or otherwise to preserved cream contained therein, the preserved cream shall in every case be described as "preserved cream," the words "preserved" and "cream" being set out in letters of the same size.

7. No receptacle containing preserved cream shall bear or shall have attached on any label a trade description within the meaning of the Merchandise Marks Act, 1887, which shall be false or in any way likely to mislead a purchaser as to the presence or utility of the preservative substance or as to the declaratory label or as to the regulations.

Given under the Seal of Office of the Local Government Board, this first day of August, in the year one thousand nine hundred and twelve.

(L.S.) JOHN BURNS, *President*.

H. C. MONRO, *Secretary*.

NOTICE.—The Public Health Act, 1896, provides by sub-section (3) of section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under any of the enactments mentioned in that Act he shall be liable to a penalty not exceeding one hundred pounds, and, in the case of a continuing offence, to a further penalty not exceeding fifty pounds for every day during which the offence continues.

The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act is enlarged by the Public Health (Regulations as to Food) Act, 1907.

Date of publication in the *London Gazette*, 2nd August, 1912.

UNSOUND FOOD REGULATIONS (FIRST SERIES), 1908.

TO ALL PORT SANITARY AUTHORITIES ; to all other Sanitary Authorities as herein defined ; to all Officers of Customs ; to all Medical Officers of Health of the Sanitary Authorities aforesaid ; to all Masters of ships ; and to all others whom it may concern.

WHEREAS by section 1 of the Public Health (Regulations as to Food) Act, 1907, [*the section* (*see* ante, *p.* 1095) *is set out*].

And whereas we, the Local Government Board, are empowered by regulations made under the Public Health Act, 1896, and the enactments mentioned in that Act, to provide for the regulations being enforced and executed by the officers of Customs, as well as by other authorities and officers, and by subsection 2 (a) of section 1 of the Public Health Act, 1896, it is provided that the regulations shall be subject to the consent, so far as they apply to the officers of Customs, of the Commissioners of His Majesty's Customs ;

And whereas, for the prevention of danger arising to public health, it is expedient that such regulations as are hereinafter set forth be made in relation to articles of food ;

And whereas the Commissioners of His Majesty's Customs have signified their consent to the said regulations, so far as they apply to the officers of Customs :

NOW, THEREFORE, we, the Local Government Board, by this our Order, and in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896,

Appendix II. and the Public Health (Regulations as to Food) Act, 1907, and of every other power enabling us in that behalf, do make the following regulations, that is to say :—

PART I.

Interpretation.

ARTICLE I.—In these regulations, unless the contrary intention appears—

(a) Words importing the masculine gender include females ;

(b) Words in the singular include the plural, and words in the plural include the singular ;

(c) Expressions referring to writing include references to printing, and other modes of representing or reproducing words in a visible form ;

(d) The expression "ship" includes a vessel or boat ;

(e) The expression "master" used in relation to a ship includes the officer, or other person for the time being in charge or command of the ship ;

(f) The expression "officer of Customs" includes any person acting under the authority of the Commissioners of His Majesty's Customs ;

(g) The expression "article of food" means an article of food which, as part of the cargo of a ship, is brought to, or delivered or landed at a place within England or Wales either as a place of actual or appointed destination, or as a place of deposit for the purpose of transmission to a place of actual or appointed destination elsewhere in the United Kingdom ;

(h) The expression "importer" means any person in the United Kingdom who, either as owner or consignee, agent or broker, is entitled to the possession, custody, or control of any article of food ;

(i) The expression "sanitary authority" means every port sanitary authority, and every council of a municipal borough or other urban district, and every rural district council whose borough or district includes or abuts on any part of a Customs port which part is not within the jurisdiction of a port sanitary authority ;

(j) The expression "the district" means the district of a sanitary authority ;

(k) The expression "medical officer of health" includes any duly qualified medical practitioner appointed or employed by a sanitary authority to act in the execution of these regulations ; and any other person appointed or employed by the sanitary authority under these regulations to exercise any powers, or to discharge any duties assigned to the medical officer of health ;

(l) The expression "local authority" means every council of a municipal borough or other urban district and every rural district council, not being a sanitary authority within the meaning of these regulations, and includes the common council of the city of London and every council of a metropolitan borough ;

(m) The expression "area" used in relation to a local authority means the area subject to the jurisdiction of the local authority for the purposes of the Public Health Act, 1875, or of the Public Health (London) Act, 1891, as the case may be ;

(n) The expression "provincial enactments" means sections one hundred and sixteen to one hundred and nineteen of the Public Health Act, 1875, and section twenty-eight of the Public Health Acts Amendment Act, 1890 (which relate to unsound food) ; and

(o) The expression "London enactments" means section forty-seven of the Public Health (London) Act, 1891 (which relates to unsound food).

Commencement and extent of regulations.

ARTICLE II.—These regulations shall come into operation on the first day of October, one thousand nine hundred and eight, and shall then and thereafter apply and have effect in relation to the district of every sanitary authority throughout England and Wales.

PART II.

Application of statutory provisions.

ARTICLE III.—Subject to the Public Health Act, 1896, and the enactments therein mentioned, as applied by the Public Health (Regulations as to Food) Act, 1907, any provision in any Act of Parliament which applies to a proceeding under or consequent upon the provincial enactments, or the London enactments, shall, according as the district is one in which the provincial enactments, or the London enactments, are or may be put in force, apply, with the

necessary modifications and adaptations, to a proceeding under or consequent upon Articles IV. to VI. in this part, and as if those articles were comprised in, and were in force as part of the provincial enactments or the London enactments, as the case may be. Appendix II.

Powers, &c., of medical officer of health in relation to unsound food.

ARTICLE IV. (*d*)—(1) The medical officer of health may examine an article of food which has been landed within the district.

Where the circumstances, in his opinion, so require, the medical officer of health may examine the article of food while it is on board a ship within the district, or after it has been delivered overside, and before it has been landed.

(2) The master of a ship, or a person having the custody of any lands or premises within the district shall, at the request of the medical officer of health, afford him access to the ship, or to the lands or premises, at any reasonable time, for the examination of an article of food which is on board the ship, or which has been deposited on the lands or premises.

(3) The importer, the master of the ship, or a person having the custody of any lands or premises shall, at the request of the medical officer of health, afford, by the convenient and suitable arrangement, unpacking or uncovering of so much of the cargo, or of any consignment delivered overside or landed or deposited on the lands or premises, as comprises articles of food, all such facilities as the medical officer of health may reasonably require for the examination of the article of food.

(4) If, on his examination, the medical officer of health is of opinion that the article of food is unsound or unwholesome, or unfit for human consumption, he may himself, or by an assistant, seize and carry away the article of food, or he may by a notice in writing to the importer, or to the master of the ship, or to any other person having charge of the article of food, require that, until the article of food has been examined by a justice, the article of food shall not, without the permission of the medical officer of health, be removed from the place at which the medical officer of health has examined it, or from any other place which he specifies in the notice.

(5) Except where the medical officer of health, at the request, or with the consent of the importer, allows an article of food, in relation to which a notice has been given in pursuance of sub-division (4) of this article, to be removed for immediate destruction under the supervision of the medical officer of health, or for the application and completion, under the like supervision, of any such process as the medical officer of health approves, and as will effectually prevent the use of the article of food for human consumption, the importer, the master of the ship, or another person shall not, without the permission of the medical officer of health, remove the article of food from the place at which the medical officer of health has examined it, or from any other place specified in the notice, until the article of food has been examined by a justice.

Powers, &c., of justice in relation to unsound food.

ARTICLE V.—On the complaint of the medical officer of health that an article of food seized and carried away in pursuance of sub-division (4) of Article IV., or that an article of food in relation to which a notice has been given in pursuance of that sub-division, is unsound or unwholesome, or unfit for human consumption, a justice, if satisfied, on his examination of the article of food, and on the evidence adduced before him, that the article of food is unsound or unwholesome, or unfit for human consumption, and that there is an absence of proof that the article of food is not intended for sale for human consumption, shall condemn the article of food and order it to be destroyed or disposed of under the supervision of the medical officer of health by such means and in such a manner as to prevent its being used for human consumption.

Where, on any such complaint, a justice, on his examination of the article of food, and on the evidence adduced before him, is satisfied that the article of food is unsound or unwholesome or unfit for human consumption, but that it has been proved that the article of food is not intended for sale for human consumption, the justice shall make an order of dismissal of the complaint, and shall, in that order, set forth the description of, and such other details as will suffice to identify the article of food ; together with the name, description, and abode of the importer, and the name, description, and abode of the person to whom the article of food is to be delivered ; and shall forthwith furnish the sanitary authority with a copy of the order.

(*d*) See *post*, p. 2398, for forms for use under this article.

Appendix II.

Powers, &c., of medical officer of health and justice in relation to unsound food in special cases.

ARTICLE VI.—(1) Where the medical officer of health has reason to believe that an article of food which has been landed within the district, and has not been examined by the medical officer of health, is deposited on any lands or premises within the district, and access to the lands or premises at a reasonable time, for the examination of the article of food by the medical officer of health, has been refused by the person having the custody of the lands or premises, the medical officer of health may make complaint to a justice.

The justice may thereupon by a warrant authorise the medical officer of health to enter the lands or premises, and to search for, seize, and carry away the article of food by an assistant or otherwise.

(2) The person having the custody of the lands or premises named in the warrant shall, at any reasonable time, afford all such facilities as the medical officer of health may reasonably require to enable him, by an assistant or otherwise, to search for, seize, and carry away the article of food.

(3) If, as the result of a search on the authority of a warrant granted in pursuance of sub-division (1) of this article, the medical officer of health finds and examines the article of food, and, on his examination, is of opinion that the article of food is unsound or unwholesome, or unfit for human consumption, he may himself or by an assistant seize and carry away the article of food, or he may, by a notice in writing to the importer, or to the person having the custody of the lands or premises, require that, until the article of food has been examined by a justice, the article of food shall not, without the permission of the medical officer of health, be removed from the place at which the medical officer of health has examined it, or from any other place which he specifies in the notice.

(4) Except where the medical officer of health, at the request, or with the consent of the importer, allows an article of food in relation to which a notice has been given in pursuance of sub-division (3) of this article, to be removed for immediate destruction under the supervision of the medical office for health, or for the application and completion, under the like supervision, of any such process as the medical officer of health approves, and as will effectually prevent the use of the article of food for human consumption, the importer or another person shall not, without the permission of the medical officer of health, remove the article of food from the place at which the medical officer of health has examined it, or from any other place specified in the notice, until the article of food has been examined by a justice.

(5) On production of the warrant granted in pursuance of sub-division (1) of this article, and on the complaint of the medical officer of health that an article of food which has been seized and carried away in pursuance of the warrant, or in relation to which a notice has been given in pursuance of sub-division (3) of this article is unsound or unwholesome, or unfit for human consumption, a justice, if satisfied on his examination of the article of food and on the evidence adduced before him that the article of food is unsound or unwholesome, or unfit for human consumption, and that there is an absence of proof that the article of food is not intended ior sale for human consumption, shall condemn the article of food, and order it to be destroyed or disposed of under the supervision of the medical officer of health by such means and in such a manner as to prevent its being used for human consumption.

Where, on any such complaint, a justice, on his examination of the article of food, and on the evidence adduced before him, is satisfied that the article of food is unsound or unwholesome or unfit for human consumption, but that it has been proved that the article of food is not intended for sale for human consumption, the justice shall make an order of dismissal of the complaint, and shall, in that order, set forth the description of, and such other details as will suffice to identify the article of food ; together with the name, description, and abode of the importer, and the name, description, and abode of the person to whom the article of food is to be delivered ; and shall forthwith furnish the sanitary authority with a copy of the order.

PART III.

Record of unsound food destroyed.

ARTICLE VII.—Where, in pursuance of these regulations, an article of food is destroyed or otherwise disposed of under the supervision of the medical officer of health, the sanitary authority before the destruction or other disposal of the article of food shall cause the description of, and such other

Appendix II.

details as will suffice to identify the article of food to be duly recorded, and shall keep the record in their custody for a period of not less than twelve months.

ARTICLE VIII. (*e*)—(1) The medical officer of health may take a sample from a consignment of articles of food for any purpose of these regulations, and, subject to sub-division (2) of this article, shall dispose of the sample in such manner as the sanitary authority direct.

Samples, &c.

(2) Where the medical officer of health who takes a sample from a consignment of articles of food is of opinion that special procedure is necessary for the examination of the articles of food, or where, at the request of the importer, the medical officer of health who takes any such sample has recourse to special procedure for the examination of the articles of food, the importer or another person who has the custody or control of the consignment shall, as regards the convenient and suitable arrangement and the place of deposit of the articles of food comprised in the consignment, afford during such time not exceeding forty-eight hours as the medical officer of health by notice in writing appoints, or during any longer time which the medical officer of health by notice in writing appoints, and to which the importer consents, all such facilities as the medical officer of health may reasonably require for the completion of his examination of the articles of food.

Notice by post.

ARTICLE IX.—A notice which, in pursuance of these regulations, the medical officer of health is empowered to give may be given by properly addressing, prepaying, and posting a letter containing the notice.

Answers to questions, &c.

ARTICLE X.—A person, in relation to anything within his knowledge, shall answer truly all such questions put to him by, and give all such information to the medical officer of health as are necessary for any purpose of these regulations; and a person, in relation to anything within his knowledge and material to any purpose of proceedings in pursuance of these regulations, shall make a true statement, and truly answer any question, when required or put by a justice or other competent authority in the course and for any purpose of those proceedings.

Appointment and powers, &c., of assistants.

ARTICLE XI.—(1) The sanitary authority may, with our consent, appoint and pay a legally qualified medical practitioner to act in the execution of these regulations, either in the place of, or as an assistant to the medical officer of health.

(2) The sanitary authority may also, with our consent, appoint or employ and pay a person to act, under the direction of the medical officer of health, in the exercise of any such powers or in the discharge of any such duties of the medical officer of health under these regulations as the sanitary authority assign to the person so appointed.

Combinations.

ARTICLE XII.—A sanitary authority and a local authority, or two or more sanitary authorities or local authorities shall act together for the purposes of these regulations in every case in which we, by Order, require any such joint action.

In every such case these regulations shall, in relation to each sanitary authority, to each district of a sanitary authority, to each local authority, and to each area of a local authority to whom and to which the Order applies, have effect subject to such adaptations and modifications as are made by the Order.

Determination of differences.

ARTICLE XIII.—(1) If a difference arises in relation to any subject matter of, or to anything done under these regulations, the difference may, on the application of all the parties affected, be referred to us for determination.

(2) It shall be at our option to determine any such difference as arbitrators or otherwise; and, if we elect to determine the difference as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions shall apply, as if they were re-enacted in these regulations, and in terms made applicable to us, and to the determination of the difference.

(3) Where we elect to determine any such difference otherwise than as arbitrators, we may by our Order determine the difference, and our determination shall be final and conclusive.

(*e*) See *post*, p. 2402, for forms for use under this article.

Appendix II.

(4) Every Order made by us in pursuance of this article shall have effect as if the Order were enacted in these regulations.

Powers to be cumulative, and to be exercised subject to Customs procedure and co-operation.

ARTICLE XIV.—(1) All powers given by these regulations shall be deemed to be in addition to, and not in derogation of any other powers conferred by regulations under the Public Health (Regulations as to Food) Act, 1907; and those other powers may be exercised in the same manner as if these regulations had not been made.

(2) Where the duties of an officer of Customs with respect to the examination of a cargo or consignment comprising an article of food have not been wholly discharged, an examination of the article of food for the purposes of these regulations shall not be made without the consent of the officer of Customs; but every officer of Customs shall afford such facilities as the circumstances require for the examination of the article of food in pursuance of these regulations.

Short title.

ARTICLE XV.—These regulations may be cited as "The Public Health (First Series: Unsound Food) Regulations, 1908."

Given under the Seal of Office of the Local Government Board, this twelfth day of September, in the year one thousand nine hundred and eight.

(L.S.) JOHN BURNS, *President.*

S. B. PROVIS, *Secretary.*

NOTICE.—The Public Health Act, 1896, provides by sub-section 3 of section 1 that if any person wilfully neglects or refuses to obey or carry out or obstructs the execution of any regulation made under any of the enactments mentioned in that Act he shall be liable to a penalty not exceeding one hundred pounds, and, in the case of a continuing offence, to a further penalty not exceeding fifty pounds for every day during which the offence continues.

The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act is enlarged by the Public Health (Regulations as to Food) Act, 1907.

Date of publication in the London Gazette, 15th September, 1908.

SPECIMEN FORMS ISSUED by the L. G. B. for use under the UNSOUND FOOD REGULATIONS (FIRST SERIES), 1908.

FORM A.

Notice.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908.

Article IV. (4) *and* (5).

NOTICE OF DETENTION OF UNSOUND FOOD.

Port of *Sanitary Authority.*
Office .
Date 19 .

To *

THIS is to give notice that the undermentioned articles of food are unsound, unwholesome, or unfit for human consumption, and that the same may not be removed from until examined by a justice, without my permission.

This permission will be given if you signify in writing on the counterfoil hereof that you consent to their being removed for immediate destruction under my supervision, or for such other treatment as I may approve.

__________ *Medical Officer of Health.*

Details.

Description and quantity

Where detained
Name of vessel
Where lying

__________ *Inspector.*

* The importer, or his authorised representative (*e.g.*, local agent, shipper, or wharfinger).

FORM A.

CONSENT TO REMOVAL OF UNSOUND FOOD.

Date 19 .

To the Medical Officer of Health,
Port of .

I, the undersigned, being the importer or the authorised representative of the importer of the following articles of food, viz. :—

detained at
ex
lying at
hereby consent to their removal for immediate destruction under your supervision, or for such other treatment as you may approve.

Signature .
Address .
Representing .

This counterfoil will be retained in the bound book.

NOTE ON FORM A.

It may be found convenient to have this form bound as a book for use at the dock side. The notice filled up by the inspector will supply sufficient evidence to the owner of the articles of food that they have been dealt with by the sanitary authority, and the counterfoil, signed by the importer, or his representative, will provide a record for the sanitary authority of the fact that the articles in question had been voluntarily surrendered for destruction.

FORM B.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908. Article IV. (4).

NOTICE OF DETENTION.

Port of Sanitary Authority.

To the Medical Officer of Health.

Date 19 .

Notice of detention has been given in the following case :—

Particulars.

Description and quantity

Where detained
If sorting required
Importer's name and adress

Name of vessel
Port and official No.
Where lying
From
Date of arrival
Where discharged and when

____________*Inspector.*

Counterfoil : to be retained.

Notice.

FORM B.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908. Article IV. (4).

NOTICE OF DETENTION.

Port of Sanitary Authority.
Office .
Date 19 .

To *

THIS is to give notice that the under-mentioned articles of food are unsound, unwholesome, or unfit for human consumption, and that the same are not to be removed from without my permission.

____________*Medical Officer of Health.*

* The importer, master of the ship, or other person having charge of the articles of food.

Appendix II.

—— Description and quantity
Where detained

Particulars.

Name of vessel
Port and official No.
Where lying
From
Date of arrival
Where discharged and when

____________________*Inspector.*

Notice.

FORM C.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908. Article IV. (4).

NOTICE OF DETENTION.

Port of Sanitary Authority.
Office .
Date 19 .

To *

This is to give notice that the undermentioned articles of food are detained as unsound, unwholesome, or unfit for human consumption, and that the same may not be removed from until examined by a justice, without my permission.

If you desire to have the articles dealt with otherwise than by a justice, the annexed reply sheet should be signed and forwarded to me by return of post.

____________________*Medical Officer of Health.*

* The importer of the articles of food.

FORM C. (REPLY SHEET.)

(TO BE RETURNED TO THE MEDICAL OFFICER OF HEALTH AT THE OFFICE OF THE PORT SANITARY AUTHORITY.)

Date , 19 .

To the *

and all others whom it may concern.

The undersigned, being importers of

Mark.	Articles of Food.

lying at
ex
which have been declared by the Medical Officer of Health of the Port of Sanitary Authority to be unsound, unwholesome, or unfit for human consumption, do hereby authorise and instruct you to † the above articles of food under the supervision of the Medical Officer of Health of the said sanitary authority, and to destroy, or deliver to

for destruction, any of the said articles declared by the said Medical Officer of Health to be unsound, unwholesome, or unfit for human consumption.

Signature .
Address .

* The person in charge of the articles of food.
† See below.

NOTES ON FORM C.

† EXAMPLES of the MANNER in which the WORDING of the REPLY SHEET may be ALTERED to meet PARTICULAR CASES.

(Words in square brackets to be erased: words in italics should be manuscript additions.)

(a) [the above articles of food under the supervision of the medical officer of health of

Appendix II.

the said sanitary authority, and to destroy, or] deliver to *the port sanitary authority or their officer* for destruction [any of] the said articles . . . . consumption.

The above would be used where the whole of the consignment referred to in the notice, *e.g.*, canned meats, was unfit for human consumption, and the medical officer of health considered it necessary that it should be destroyed by the port sanitary authority.

(b) *sort* the above articles of food under the supervision of the medical officer of health of the said sanitary authority, and to destroy, [or deliver to . . . . for destruction] any of the said articles . . . . consumption.

The above would be employed when a proportion of the articles, *e.g.*, bananas, are supposed to be unsound, and it is considered desirable to give the consignees the opportunity of sorting the sound from the unsound, and to allow them or their agents to dispose of the unsound articles under the supervision of the medical officer of health.

(c) *sort* the above articles of food under the supervision of the medical officer of health of the said sanitary authority, and to [destroy or] deliver to *the port authority or their officer* for destruction any of the said articles . . . . consumption.

The above provides for a similar case to (b), except that it is desirable that the articles of food found to be unsound, *e.g.*, canned meats, should be dealt with by the port sanitary authority.

(d) *destroy* the above articles of food under the supervision of the medical officer of health of the said sanitary authority, [and . . . . consumption].

The above is applicable where the whole of the articles, *e.g.*, fruit, are unfit for human consumption, and where there is no objection to the consignee, or his agent, himself destroying them under the supervision of the medical officer of health.

Other variations in the wording can, of course, be employed to meet special cases.

Counterfoil.

FORM D.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908.

Article IV. (1), (2), (3).

EXAMINATION NOTICE.

Port of *Sanitary Authority*

To the Medical Officer of Health.

An examination notice has been sent

To

Articles

Place of deposit

Date

Time

————————— *Inspector.*

. . . .

Notice.

FORM D.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908.

Article IV. (1), (2), (3).

EXAMINATION NOTICE.

Port of *Sanitary Authority.*

Office .

Date 19 .

To *

and to all others whom it may concern.

I have to inform you that the examination of certain articles of food, viz. :

at present deposited in

is desirable. I have therefore to request that you will afford me, or any person duly authorised on my behalf, proper access to the ship, lands, or premises, and further, that you will arrange for such unpacking, opening, or uncovering of cargo or goods as may be necessary for the purpose of such examination.

————————— *Medical Officer of Health.*

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* The importer, master of the ship, or other person having the custody of lands or premises.

Appendix II.

Counterfoil

FORM E.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908. Article VIII. (2).

NOTICE OF SPECIAL PROCEDURE.

Port of Sanitary Authority.

To the Medical Officer of Health.

Notice as to special procedure has been served on
Articles
Place of deposit
Date
Time

________________*Inspector.*

Notice.

FORM E.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908. Article VIII. (2).

NOTICE AS TO SPECIAL PROCEDURE REQUIRED FOR EXAMINATION OF FOODS.

Port of Sanitary Authority.
Office .
Date 19 .

To *

This is to give notice that special procedure is necessary for the examination of the following articles of food :—

Marks.	Description.

and that the same are not to be removed from

for a period of hours without my consent ; and further, that you should afford such facilities for the complete examination as I, or any person duly authorised on my behalf, shall direct.

________________*Medical Officer of Health.*

* The importer, or other person who has the custody or control of the articles of food.

FORM F. Appendix II.

PUBLIC HEALTH (FIRST SERIES, UNSOUND FOOD) REGULATIONS, 1908. Article VIII. (1).

Port of *Sanitary Authority.*

Voucher in respect of sample taken for purpose of examination.

Description of Parcel.				Quantity taken as sample.
Mark.	Quantity.	Package.	ex Ship.	

________________ *Inspector.*

Date________________

NOTE.—This form should be bound in a book, with carbon duplicate.

FOREIGN MEAT REGULATIONS, 1908.

TO ALL PORT SANITARY AUTHORITIES ; To all other Sanitary Authorities as herein defined : To all Officers of Customs ; To all Medical Officers of Health of the Sanitary Authorities aforesaid ; To all Masters of Ships ; And to all others whom it may concern.

WHEREAS by section 1 of the Public Health (Regulations as to Food) Act, 1907 [*the section* (*see* ante, *p.* 1095) *is set out*].

And whereas we, the Local Government Board, are empowered by regulations made under the Public Health Act, 1896, and the enactments mentioned in that Act, to provide for the regulations being enforced and executed by the officers of Customs, as well as by other authorities and officers, and by sub-section 2 (a) of section 1 of the Public Health Act, 1896, it is provided that the regulations shall be subject to the consent, so far as they apply to the officers of Customs, of the Commissioners of His Majesty's Customs ;

And whereas, for the prevention of danger arising to public health, it is expedient that such regulations as are hereinafter set forth be made in relation to articles of food ;

And whereas the Commissioners of His Majesty's Customs have signified their consent to the said regulations, so far as they apply to the officers of Customs ;

Now THEREFORE, we, the Local Government Board, by this our Order, and in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health (Regulations as to Food) Act, 1907, and of every other power enabling us in that behalf, do make the following regulations, that is to say :—

ARTICLE I. [*This article was revoked by the Amending Regulations of* 1909, *and Article I. thereof* (*see* post, *p.* 2407) *was substituted for it.*] Interpretation.

ARTICLE II.—These regulations shall come into operation on the first day of January, one thousand nine hundred and nine, and shall then and thereafter apply and have effect in relation to the district of every sanitary authority throughout England and Wales, and shall be enforced and executed by every officer of Customs, by every sanitary authority, and by the medical officer of health, and where the circumstances so require, by any other officer of a sanitary authority. Commencement and extent of regulations.

ARTICLE III.—(1) The officer of Customs, on the arrival of a ship within the district, shall ascertain whether the cargo of the ship comprises any foreign meat. Examination of foreign meat by Customs officer.

Appendix II.

(2) Where the officer of Customs finds, or has reason to believe, that the cargo comprises foreign meat having, according to the best opinion which, in the circumstances of the case, his knowledge enables him to form, the characteristics of foreign meat of Class I., or of foreign meat of Class II., the officer of Customs by a notice in writing given to the master or to the importer shall require that, until the meat has been examined by the medical officer of health, it shall not be removed from the ship, or from the place of delivery or of landing, or from any other place which the officer of Customs specifies in the notice.

The officer of Customs shall at the same time inform the medical officer of health to the effect of the notice.

(3) Where the officer of Customs finds that the cargo comprises foreign meat of Class III., or foreign meat unclassed, the officer of Customs, unless, by reason of facts brought to his knowledge, or of representations made to him, he is of opinion that the meat requires examination by the medical officer of health, may allow the meat to be removed from the ship, or from the place of delivery or of landing without any such examination.

Where the officer of Customs is of opinion that the meat requires examination by the medical officer of health, the officer of Customs by a notice in writing shall require that, until the meat has been examined by the medical officer of health, it shall not be removed from the ship, or from the place of delivery or of landing, or from any other place which the officer of Customs specifies in the notice.

The officer of Customs shall at the same time inform the medical officer of health to the effect of the notice.

(4) Where any notice has been given in relation to any foreign meat by the officer of Customs, in pursuance of sub-division (2) or of sub-division (3) of this article, a person shall not, without the express permission of the officer of Customs, remove the meat, at any time before its examination by the medical officer of health, from the ship, or from the place of delivery or of landing, or from any other place specified in the notice.

Examination of foreign meat by medical officer of health.

(5) On being informed by the officer of Customs to the effect of the notice given by him in pursuance of sub-division (2) or of sub-division (3) of this article, the medical officer of health shall forthwith proceed to examine the foreign meat to which the notice relates.

☞ If, upon his examination of the meat, the medical officer of health is of opinion that the meat may be removed to a place of destination in England or Wales for any purpose other than exportation, he shall give a certificate (*f*) in writing to that effect.

If, upon his examination of the meat, the medical officer of health is of opinion that the meat should not be removed to a place of destination in England or Wales for any purpose other than exportation, he shall by a notice (*f*) in writing forbid the removal of the meat for any purpose other than exportation.

(6) Every notice given by the officer of Customs, and every certificate and every notice given by the medical officer of health in pursuance of this article shall set forth the description of the foreign meat to which the notice or certificate relates, and such other details as will suffice to identify the particular consignment.

The medical officer of health shall give every such certificate in duplicate, and every such notice in triplicate.

The medical officer of health shall give one copy of the certificate to the officer of Customs, and one copy to the importer.

The medical officer of health shall give one copy of the notice to the officer of Customs, one copy to the importer, and one copy to the sanitary authority.

Exam nation of foreign meat by medical officer of health in special cases.

ARTICLE IV.—(1) Where the medical officer of health has ascertained that any foreign meat which the officer of Customs has allowed to be removed is still within the district, the medical officer of health may proceed forthwith to examine the meat.

If, upon his examination of the meat, the medical officer of health is of opinion that the meat should not be removed to a place of destination in England and Wales for any purpose other than exportation, he shall by a

(*f*) See *post*, p. 2411, for forms of notice and certificate.

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notice (*g*) in writing forbid the removal of the meat for any purpose other than exportation.

(2) Every notice given by the medical officer of health in pursuance of this article shall set forth the description of the foreign meat to which the notice relates, and such other details as will suffice to identify the particular consignment.

The medical officer of health shall give every such notice in duplicate.

The medical officer of health shall give one copy of the notice to the importer, and one copy to the sanitary authority.

Rules for guidance of medical officer of health.

ARTICLE V.—The medical officer of health in determining whether, in the case of any foreign meat to which these regulations apply, he shall give a certificate or a notice in pursuance of these regulations, shall observe and comply with the following rules, that is to say :—

He shall not give a certificate and shall give a notice as regards foreign meat of Class I. and foreign meat of Class II. :

He shall not give a certificate and shall give a notice as regards foreign meat of Class III., or foreign meat unclassed, if, in his opinion, the meat, notwithstanding the official certificate, is diseased, unsound, unwholesome, or unfit for human consumption.

Notice by sanitary authority to importer.

ARTICLE VI.—The sanitary authority, within twelve hours after the receipt of a copy of a notice (*g*) by the medical officer of health, in pursuance of sub-division (5) of Article III., or of sub-division (1) of Article IV., with respect to any foreign meat, shall give to the importer notice in writing which, in addition to such other particulars (if any) as the sanitary authority deem necessary or expedient, shall state that, unless, within twelve hours after the receipt of the notice, the importer gives to the sanitary authority a written undertaking to the effect that, subject to compliance in all respects with the requirements of any regulations made under the Public Health (Regulations as to Food) Act, 1907, and in force for the time being, he will export the meat at his own expense, or, in proceedings before a justice in pursuance of those regulations, he will prove that the meat is not intended for sale for human consumption, the sanitary authority will cause the meat to be destroyed under the supervision of the medical officer of health.

Destruction of foreign meat.

ARTICLE VII.—(1) Where, in pursuance of Article VI., a notice has been given by the sanitary authority with respect to any foreign meat, and no such written undertaking as is described in the notice has been received by the sanitary authority within the time specified in the notice, the sanitary authority shall forthwith cause the meat to which the notice relates to be destroyed, under the supervision of the medical officer of health.

(2) Where, in pursuance of Article VI., a notice has been given by the sanitary authority with respect to any foreign meat, and within the time specified in the notice the sanitary authority have received such a written undertaking as is described in the notice to the effect that the importer will at his own expense export the meat, and within three days after the receipt by the sanitary authority of the undertaking the importer fails to export the meat, the sanitary authority shall cause the meat to be detroyed under the supervision of the medical officer of health.

Proceedings for proof that foreign meat is not intended for sale.

ARTICLE VIII.—(1) Where, in pursuance of Article VI., a notice has been given by the sanitary authority with respect to any foreign meat, and within the time specified in the notice, the sanitary authority have received such a written undertaking as is described in the notice to the effect that, subject to compliance in all respects with any regulations made under the Public Health (Regulations as to Food) Act, 1907, and in force for the time being, the importer, in proceedings before a justice, in pursuance of those regulations, will prove that the meat is not intended for sale for human consumption, the sanitary authority shall within twenty-four hours after the receipt of the written undertaking take such steps as are prescribed or authorised by this article to obtain the decision of a justice with respect to the subject-matter of the undertaking of the importer or to any subject-matter of this article.

(2) For the purposes of this article, an application may be made by the

(*g*) See *post*, p. 2411, for forms of notice and certificate.

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sanitary authority to any justice having jurisdiction in the district, and thereupon sub-section (2) of section twenty-eight of the Public Health Acts Amendment Act, 1890, whether that sub-section is or is not in force in the district, and any provision in any Act of Parliament which applies to a proceeding under or consequent upon that sub-section, shall have effect in relation to the proceedings, as if the application were a complaint within the meaning of the said sub-section, and otherwise subject to such modifications and adaptations as are necessary to give effect to the following provisions, that is to say :—

(i.) An order made by a justice under the said sub-section, as applied by this sub-division, shall direct any foreign meat to be destroyed by the sanitary authority under the supervision of the medical officer of health, if the justice is satisfied that, in pursuance of any regulations made under the Public Health (Regulations as to Food) Act, 1907, and in force for the time being, the removal of the meat to a place of destination in England or Wales for any purpose other than exportation has been forbidden, and that, on the evidence adduced before him, there is an absence of proof that the meat is not intended for sale for human consumption.

Where the justice is satisfied, on the evidence adduced before him, that it has been proved that the meat is not intended for sale for human consumption, he shall make an order of dismissal of the application. By that order the justice shall direct that the prohibition of the removal of the meat in pursuance of any such regulation as aforesaid shall cease to have effect.

(ii.) The justice shall further set forth in the order the description of and such other details as will suffice to identify the particluar consignment of meat ; together with the name, description, and abode of the importer, and the name, description and abode of the person to whom the consignment of meat is to be delivered ; and shall forthwith furnish the sanitary authority with a copy of the order.

Prohibition of removal or sale of foreign meat in certain cases.

ARTICLE IX.—Where a notice forbidding the removal of any foreign meat has been given by the medical officer of health in pursuance of sub-division (5) of Article III., or of sub-division (1) of Article IV., and a justice has not, in pursuance of sub-division (2) of Article VIII., directed that the prohibition of the removal of the meat shall cease to have effect, a person shall not at any time remove the meat to a place of destination in England or Wales for any purpose other than exportation.

Record of foreign meat destroyed.

ARTICLE X.—Where the sanitary authority in pursuance of these regulations cause any foreign meat to be destroyed, the sanitary authority, before the destruction of the meat, shall cause the description of, and such other details as will suffice to identify the particular consignment to be duly recorded, shall give to the importer a notice in writing of the destruction of the meat, including the contents of the record, and shall keep the record in their custody for a period of not less than twelve months.

Certificates and notices by post.

ARTICLE XI.—A certificate or notice which, in pursuance of these regulations, the medical officer of health is empowered or required, or the sanitary authority are required to give, may be given by properly addressing, prepaying and posting a letter containing the certificate or notice.

Samples.

ARTICLE XII.—The medical officer of health may, for any purpose of these regulations, take a sample of foreign meat on board a ship, or delivered overside or landed within the district, and shall dispose of the sample in such manner as the sanitary authority direct.

Improper landing and transhipment of foreign meat.

ARTICLE XIII.—A master of a ship or another person shall not knowingly land or put on shore, within the district of a sanitary authority, any foreign meat which, in compliance with a requisition of a sanitary authority in pursuance of these regulations, the importer has caused to be exported.

Answers to questions, &c.

ARTICLE XIV.—A person, in relation to anything within his knowledge, shall answer truly all such questions put by him to, and give all such information to the officer of customs or the medical officer of health as are necessary for any purpose of these regulations ; and a person in relation to anything within his knowledge, and material to any purpose of proceedings in pursuance

of these regulations, shall make a true statement, and truly answer any question when required or put by a justice or other competent authority in the course and for any purpose of those proceedings.

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ARTICLE XV.—(1) The sanitary authority may, with our consent, appoint and pay a legally qualified medical practitioner to act in the execution of these regulations, either in the place of, or as an assistant to the medical officer of health.

Substitutes for, or assistants of, medical officers of health.

(2) The sanitary authority may also, with our consent, appoint or employ and pay a person to act, under the direction of the medical officer of health, in the exercise of any such powers or in the discharge of any such duties of the medical officer of health under these regulations as the sanitary authority assign to the person so appointed.

ARTICLE XVI.—A sanitary authority and a local authority, or two or more sanitary authorities or local authorities, shall act together for the purposes of these regulations in every case in which we, by Order, require any such joint action.

Combinations.

In every such case, these regulations shall, in relation to each sanitary authority, to each district or a sanitary authority, to each local authority, and to each area of a local authority to whom and to which the Order applies, have effect subject to such adaptations and modifications as are made by the Order.

ARTICLE XVII.—(1) If a difference arises in relation to any subject-matter of, or to anything done under these regulations, the difference may, on the application of all the parties affected, be referred to us for determination.

Determination of differences.

(2) It shall be at our option to determine any such difference as arbitrators or otherwise; and, if we elect to determine the difference as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were re-enacted in these regulations, and in terms made applicable to us, and to the determination of the difference.

(3) Where we elect to determine any such difference otherwise than as arbitrators, we may by our Order determine the difference, and our determination shall be final and conclusive.

(4) Every Order made by us in pursuance of this article shall have effect as if the Order were enacted in these regulations.

ARTICLE XVIII.—These regulations may be cited as "The Public Health (Foreign Meat) Regulations, 1908."

Short title.

Given under the Seal of Office of the Local Government Board, this twelfth day of September, in the year one thousand nine hundred and eight.

(L.S.) JOHN BURNS, *President*.

S. B. PROVIS, *Secretary*.

NOTICE.—The Public Health Act, 1896, provides by sub-section 3 of section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of any regulation made under any of the enactments mentioned in that Act he shall be liable to a penalty not exceeding one hundred pounds, and, in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues.

The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act is enlarged by the Public Health (Regulations as to Food) Act, 1907.

Date of publication in the London Gazette, 15th September, 1908.

FOREIGN MEAT REGULATIONS (AMENDMENT), 1909.

TO ALL PORT SANITARY AUTHORITIES; To all other Sanitary Authorities and Local Authorities as herein defined; To all Officers of Customs and Excise; To all Medical Officers of Health of the Sanitary Authorities and Local Authorities aforesaid; To all Masters of Ships; And to all others whom it may concern.

WHEREAS, in relation to articles of food, the Public Health (Foreign Meat) Regulations, 1908, provide for the use of an official certificate, for the classifica-

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tion of foreign meat, and for the combined action of authorities for the purposes of those regulations ;

And whereas it is expedient that, with respect to the aforesaid matters and to other purposes, the Public Health (Foreign Meat) Regulations, 1908, be altered, and that, accordingly, such regulations as are hereinafter set forth be made ;

And whereas the Commissioners of Customs and Excise have signified their consent to the said regulations, so far as they apply to the officers of Customs and Excise :

NOW THEREFORE, we, the Local Government Board, by this our Order, and in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health (Regulations as to Food) Act, 1907, and of every other power enabling us in that behalf, do make the following regulations, that is to say :

Revocation of Article I. of former regulations and substitution of altered regulation.

ARTICLE I.—Article I. of the Public Health (Foreign Meat) Regulations, 1908, shall be revoked : and those regulations shall be altered so that they shall have effect, with the substitution for the article so revoked of the following article, namely :—

Interpretation.

" ARTICLE I.—In these regulations, unless the contrary intention appears—

" (a) Words importing the masculine gender include females ;

" (b) Words in the singular include the plural, and words in the plural include the singular ;

" (c) Expressions referring to writing include references to printing and other modes of representing or reproducing words in a visible form ;

" (d) The expression ' cattle ' includes a bull, cow, ox, heifer, calf, ram, ewe, wether, goat, and kid ;

" (e) The expression ' pig ' includes a boar, sow, and hog ;

" (f) The expression ' meat ' means pork, the flesh of cattle, any other edible part of a pig or of cattle, or a substance, compound, material, or article of which pork, or the flesh of cattle, or any other edible part of a pig or of cattle is an ingredient ;

" (g) The expression ' foreign ' used in relation to meat means brought from a place situate elsewhere than in the United Kingdom, the Channel Islands, or the Isle of Man ;

" (h) The expression ' official certificate ' (*h*) used in relation to foreign meat or in relation to a box, case, receptacle, or package containing foreign meat, means a certificate, label, mark, stamp, or other voucher which, by a notice published in the London Gazette at any time during the period of twelve months beginning on the first day of October, one thousand nine hundred and eight, or which, by a notice published in the London Gazette after the expiration of that period, is declared to be admissible in the manner, to the extent, and subject to the rules and conditions, prescribed in that notice, as evidence that the cattle or pig from which the meat is derived has been certified by a competent authority in the place of origin to be free from disease at the time of slaughter, and that the meat has been certified by the like authority to have been dressed or prepared, and packed with the needful observance of all requirements for the prevention of danger arising to public health from the meat as an article of food ; and, for the purposes of this definition and of any regulations under the Public Health (Regulations as to Food) Act, 1907, every official certificate which, by a notice published in the London Gazette at any time during the period of twelve months beginning on the first day of October,

(*h*) Official vouchers recognised for Denmark, Netherlands, Canada and New Zealand were printed in the Gazette of January 22nd, 1909; for Netherlands (substituted form) in that of April 20th, 1909 ; for Belgium, New South Wales and Victoria in that of September 24th, 1909 ; for Queensland in that of October 18th, 1910; for Sweden in that of April 3rd, 1914 ; and for Russia in those of February 24th and May 12th, 1914.

one thousand nine hundred and eight, is declared to be admissible as aforesaid, shall, notwithstanding anything prescribed in the notice, continue to be so admissible until, by a further notice to be published in the London Gazette, the said official certificate is declared to be no longer so admissible ;

"(i) The expression 'foreign meat of Class I.' means foreign meat in the form

"(A) Of scrap meat, namely, meat which, whether it is fresh, or has, before importation, been subjected to a process of freezing or other refrigeration, or to chemical or other treatment, with or without the addition of any preservative or colouring substance—

"(i.) consists of scraps, trimmings or other pieces (whether with or without bone in its natural state of attachment) of such shape or in such condition as to afford insufficient means of identification with definite parts of a carcase ; and

"(ii.) has not, before importation, been made ready for human consumption in the form of a sausage, or of another prepared or manufactured article of food ;

or

"(B) Of tripe, namely, any edible part of the stomach, or

"Of a tongue, or kidney,

to which formalin, or a solution, or other preparation of, or comprising formic aldehyde ; or a compound containing fluorine or boron ; or salicylic acid, formic acid, sulphurous acid, benzoic acid, or any compound of any such acid has been applied ;

or

"(C) Of severed parts of the carcase of a pig, or of other edible parts of a pig, which have not, before importation, been salted, cured, pickled, dried, or smoked, or otherwise prepared in the manner in which bacon or ham is ordinarily prepared, and which are not contained in a box, case, receptacle, or package with an official certificate impressed thereon, or affixed or attached thereto ;

or

"(D) Of severed parts of the carcase of a pig, or of other edible parts of a pig, which have, before importation, been salted, cured, pickled, dried, or smoked, or otherwise prepared in the manner in which bacon or ham is ordinarily prepared, and which are not contained in a box, case, receptacle, or package with an official certificate impressed thereon, or affixed or attached thereto, and which, in the case of the severed parts of the carcase, are without the lymphatic glands about those parts in their natural position ;

or

"(E) Of meat which, whether derived from cattle or a pig, is in the form of a carcase, or of a part of a carcase, and, in either case, comprises the ribs, and is without any such membrane as, in its natural position, forms the lining of the cavity enclosed by the ribs ;

"(j) The expression 'foreign meat of Class II.' means foreign meat which, being in the form of the entire carcase of a pig, is without the head in its natural state of attachment to the carcase, or is without the lymphatic glands about the throat, or about any other part of the carcase, in their natural position ;

"(k) The expression 'foreign meat of Class III.' means foreign meat which is in the form of severed parts of the carcase of a pig, or of other edible parts of a pig, which is not and does not comprise any foreign meat of Class I., or any foreign meat of Class II., and which is contained in a box, case, receptacle, or package with an official certificate impressed thereon, or affixed or attached thereto ;

"(l) The expression 'foreign meat unclassed' means foreign meat other than foreign meat of Class I., foreign meat of Class II., or foreign meat of Class III. ;

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"(m) The expression 'importer' means any person in the United Kingdom who, either as owner or consignee, agent or broker, is entitled to the possession, custody, or control of any foreign meat;

"(n) The expression 'ship' includes a vessel or boat;

"(o) The expression 'officer of Customs and Excise' includes any person acting under the authority of the Commissioners of Customs and Excise;

"(p) The expression 'master' used in relation to a ship includes the officer, or other person for the time being in charge or command of the ship;

"(q) The expression 'sanitary authority' means every port sanitary authority, and every council of a municipal borough or other urban district, and every rural district council whose borough or district includes or abuts on any part of a Customs port which part is not within the jurisdiction of a port sanitary authority;

"(r) The expression 'the district' means the district of a sanitary authority;

"(s) The expression 'medical officer of health' includes any duly qualified medical practitioner appointed or employed by a sanitary authority to act in the execution of these regulations; and any other person appointed or employed by the sanitary authority under these regulations to exercise any powers, or to discharge any duties assigned to the medical officer of health;

"(t) The expression 'local authority' means every council of a municipal borough or other urban district and every rural district council, not being a sanitary authority within the meaning of these regulations, and includes the common council of the city of London and every council of a metropolitan borough;

"(u) The expression 'area' used in relation to a local authority means the area subject to the jurisdiction of the local authority for the purposes of the Public Health Act, 1875, or of the Public Health (London) Act, 1891, as the case may be."

Commencement and extent of operation of amending regulations.

ARTICLE II.—These regulations shall come into operation on the thirtieth day of September, one thousand nine hundred and nine, and then and thereafter the Public Health (Foreign Meat) Regulations, 1908, and any Order theretofore made in pursuance of Article XVI. of those regulations shall apply and have effect and shall be enforced and executed in such form and in such manner as will give full effect to the alterations made by these regulations, and as if, throughout the Public Health (Foreign Meat) Regulations, 1908, references to an officer of Customs and Excise were substituted for references to an officer of Customs, and as if, throughout any such Order, references to the Public Health (Foreign Meat) Regulations, 1908, as altered by these regulations, were substituted for references to the Public Health (Foreign Meat) Regulations, 1908, and references to an officer of Customs and Excise were substituted for references to an officer of Customs.

Short title.

ARTICLE III.—These regulations may be cited as "The Public Health (Foreign Meat) Amending Regulations, 1909."

Given under the Seal of Office of the Local Government Board, this twenty-seventh day of September, in the year one thousand nine hundred and nine.

(L.S.) JOHN BURNS, *President.*

S. B. PROVIS, *Secretary.*

NOTICE.—The Public Health Act, 1896, provides by sub-section 3 of section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of any regulation made under any of the enactments mentioned in that Act he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues.

The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act is enlarged by the Public Health (Regulations as to Food) Act, 1907.

Date of publication in the London Gazette, 28th September, 1909.

SPECIMEN FORMS ISSUED BY THE L. G. B. FOR USE UNDER THE FOREIGN MEAT REGULATIONS.

_______________ SANITARY AUTHORITY.

NOTICE.*

PUBLIC HEALTH (Foreign Meat) REGULATIONS, 1908 (Articles III. (5) and IV. (1)).

To

This is to give notice that I have examined the foreign meat described as follows :—

now lying at
and that the same is not to be removed therefrom for any purpose other than for exportation.

____

Medical Officer of Health.

Date _______________

* This notice should be in triplicate—1 copy to Customs officer,
1 copy to importer,
1 copy retained in office.

_______________ SANITARY AUTHORITY.

PUBLIC HEALTH (Foreign Meat) REGULATIONS, 1908.

____

(Date) _______________

To

WHEREAS notice in writing has been duly given to you by the medical officer of health for the sanitary district, that he has examined certain foreign meat, namely now lying or deposited at and that the same is not to be removed therefrom for any purpose other than exportation. THIS IS TO GIVE NOTICE that unless you do, within *twelve hours* from the receipt by you of this notice, submit in writing an undertaking that you will, subject to compliance in all respects with the requirements of any regulations made under the Public Health (Regulations as to Food) Act, 1907, and in force for the time being, export the said meat at your own expense, or that you will, in proceedings before a justice in pursuance of the said regulations, prove that the said meat is not intended for sale for human consumption, the said meat will be destroyed under the supervision of the said medical officer of health.

____

Clerk.

_______________ SANITARY AUTHORITY.

CERTIFICATE.*

PUBLIC HEALTH (Foreign Meat) REGULATIONS, 1908 (Article III. (5)).

To

I HEREBY certify that I have examined the foreign meat, described as follows :—

now lying at
and that the same may be removed.

____

Medical Officer of Health.

Date _______________

* This notice should be in triplicate—1 copy to Customs officer,
1 copy to importer,
1 copy retained in office,

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GASWORKS.

See "PROVISIONAL ORDERS."

HOUSING AND TOWN PLANNING.

Reference may be made also to the following official publications:—Memoranda (December, 1909) as to the effect of the Housing, Town Planning, etc., Act, 1909; Memorandum (May, 1910) as to the Procedure Regulations (*post*, p. 2437); Memorandum (March 25th, 1913) as to the provision and arrangement of houses for the working classes.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR THE CONFIRMATION OF IMPROVEMENT SCHEMES UNDER PART I. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890, AS AMENDED BY SECTION 5 OF THE HOUSING OF THE WORKING CLASSES ACT, 1903, AND SECTIONS 22, 23, 24, AND 27 OF THE HOUSING, TOWN PLANNING, ETC., ACT, 1909.

1. The application must be made by a petition, under the seal of the local authority and containing the particulars required by section 8 of the Act of 1890.

2. The petition should be accompanied by the following documents and particulars:—

(a) A copy of the official representation.

(b) Two copies of the improvement scheme.

(c) Two copies of the estimate of the cost of carrying the scheme into effect.

(d) Particulars of the scheme, giving the acreage of the area affected by it, the number of persons of the working classes who will be displaced, the approximate rents paid by such persons, and the number of such persons for whom, and the place or places at which, dwelling accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, the reason for this course must be stated, and the distance by the nearest public thoroughfare from that area must be given. The particulars should also show, as far as practicable, in what way the area included in the scheme, and the place or places at which dwelling accommodation for the working classes is to be provided, may be dealt with so as to carry out the purposes of the Acts and the proposed scheme.

(e) Maps showing (1) the area included in the official representation, and (2) the area included in the improvement scheme (which maps are hereinafter referred to as the "deposited maps"), (3) any site where dwelling accommodation is to be provided which is not within the area included in the scheme, and (4) the position of each site in relation to the area included in the scheme; and a book of reference to the deposited maps in duplicate. The several properties should be numbered consecutively on the deposited maps. Each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundaries of each parcel being defined by hard lines, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies. The book of reference should be prepared *on the ground* at the same time as and in conjunction with the deposited maps, each parcel of land being numbered to correspond with the deposited maps, and being described so as to show clearly what properties are covered by each number.

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(f) Particulars showing, by reference where practicable to the numbers of the properties on the maps, (1) the area included in the official representation ; (2) any lands (a) excluded from such area by the local authority, or (b) included in it by the local authority, under section 6 (1) (a) of the Act of 1890, as amended by the Act of 1909, and the reasons for such exclusion or inclusion ; (3) any lands included for widening existing approaches to the unhealthy area or otherwise for opening out the same for purposes of ventilation or health, under section 6 (1) (b) ; (4) the proposals under section 23 of the Act of 1909 as to the closing or diversion of any highways or any other matter; and (5) the lands proposed to be taken compulsorily.

(g) A statutory declaration, specifying in which of the modes mentioned in section 7 of the Act of 1890 the notices have been served, and the names of the persons so served. This declaration should be made by the person who served the notices.

(h) A statutory declaration made by the clerk to the local authority, showing that all the other requirements of section 7 of the Act of 1890, as amended by section 5 (1) of the Act of 1903, have been complied with, and that the petition states the names of all the owners or reputed owners and lessees or reputed lessees who have dissented in respect of the taking of their lands. Copies of the newspapers containing the advertisements, and also of the form of notice served on the owners, lessees, and occupiers, should be annexed to the declaration as exhibits.

3. Every statutory declaration must be made or sworn before a justice of the peace or a commissioner for oaths, and must be stamped with a half-crown *impressed* stamp, and each exhibit to a statutory declaration must be marked by the declarant, and by the justice of the peace or commissioner for oaths, as the case may be, in the usual way.

N.B.—It is particularly requested that the petition, declaration, notices, and other documents may be on foolscap paper of the usual size.

Local Government Board, Whitehall,
June, 1910.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR ORDERS SANCTIONING RECONSTRUCTION SCHEMES UNDER PART II. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890, AS AMENDED BY SECTION 7 OF THE HOUSING OF THE WORKING CLASSES ACT, 1903, AND SECTIONS 23, 24, AND 46 OF THE HOUSING, TOWN PLANNING, ETC., ACT, 1909.

The application must be made by a petition, under the seal of the local authority, and should be accompanied by the following documents and particulars :—

(1) A copy of each order for demolition, affecting the reconstruction scheme, which may have been made in pursuance of Part II. of the Act of 1890, as amended by the Act of 1909 [see section 39 (1) (a) of the Act of 1890].

(2) A copy of any report of a committee or of the medical officer of health of the local authority relating to the area and the proposed scheme.

(3) A copy of the resolution of the local authority under section 39 (1) of the Act of 1890.

(4) Two copies of the scheme.

(5) Two copies of the estimate of the cost of carrying the scheme into effect.

(6) Particulars of the scheme, giving the extent and total population of the area to which it relates, the number of persons of the working classes who will be displaced, the approximate rents paid by such persons, and the number of such persons for whom, and the place or places at which, dwelling accommodation is to be provided. Where

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this accommodation is not intended to be provided within the limits of the area included in the scheme, the reason for this course must be stated, and the distance by the nearest public thoroughfare from that area must be given. The particulars should also show, as far as practicable, in what way the area included in the scheme, and the place or places at which dwelling accommodation for the working classes is to be provided may be dealt with so as to carry out the purposes of the Acts and the proposed scheme.

(7) Maps showing (1) the area to which the scheme relates (hereinafter referred to as the "deposited map"), (2) any site where dwelling accommodation is to be provided which is not within the area included in the scheme, and (3) the position of the site in relation to the area included in the scheme; together with a book of reference to the deposited map in duplicate. The several properties should be numbered consecutively on the deposited map. Each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundaries of each parcel being defined by hard lines and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies. The book of reference should be prepared *on the ground* at the same time as and in conjunction with the deposited map, each parcel of land being numbered to correspond with the deposited map, and being described so as to show clearly what properties are covered by each number.

(8) Particulars showing, by reference where practicable to the numbers of the properties on the deposited map, (A) any neighbouring lands included in the area comprised in the scheme under section 7 of the Act of 1903, and the reasons for such inclusion; (B) any lands included for widening existing approaches to the area or otherwise for opening out the same for purposes of ventilation or health, under section 6 (1) (b) of the Act of 1890, as applied by section 23 (2) of the Act of 1909; (C) the proposals under section 23 (1) of the Act of 1909 as to the closing or diversion of any highways or any other matter; and (D) the lands, if any, proposed to be taken compulsorily.

(9) A statutory declaration as to the service of the notices required to be given under sub-section (2) of section 39 of the Act of 1890, specifying as regards every owner or reputed owner, lessee or reputed lessee, and occupier, in which of the modes mentioned in section 7 (c) (d) of the Act the notices have been served. The statutory declaration must be made or sworn before a justice of the peace or a commissioner for oaths by the person who served the notices, and must be stamped with a half-crown *impressed* stamp, and each exhibit to a statutory declaration must be marked by the declarant, and by the justice of the peace or commissioner for oaths, as the case may be, in the usual way. Copies of the form of notice served on the owners, lessees, and occupiers, should be annexed to the declaration as exhibits.

(10) A statement of the names of all the owners or reputed owners and lessees or reputed lessees who have dissented in respect of the taking of their lands.

N.B.—It is particularly requested that the petition, declaration, notices, and other documents may be on foolscap paper of the usual size.

Local Government Board, Whitehall.
July, 1910.

FORMS OF ADVERTISEMENT AND NOTICES: IMPROVEMENT SCHEME. **Appendix II.**

TO THE SEVERAL LOCAL AUTHORITIES IN ENGLAND AND WALES for the purposes of Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, &c., Act, 1909; And to all others whom it may concern.

WHEREAS by section 27 of the Housing of the Working Classes Act, 1890 (herein-after referred to as "the Act of 1890"), which section is included in Part I. of the Act of 1890, it was enacted as follows:—

"The confirming authority may by order prescribe the forms of advertisements and notices under this part of this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this part of this Act."

And whereas, in pursuance of the said enactment, the Secretary of State and the Local Government Board, as the confirming authorities within the meaning of Part I. of the Act of 1890, by the Orders described in the first schedule to this Order (which Orders are herein-after referred to as "the Orders"), prescribed certain forms of advertisement and notices under Part I. of the Act of 1890;

And whereas by an Order of the Privy Council issued in pursuance of section 2 of the Housing of the Working Classes Act, 1903, and dated the 27th day of February, 1905, all the powers and duties of the Secretary of State under the Housing Acts were transferred to the Local Government Board;

And whereas the said section 27 of the Act of 1890 was repealed by section 75 of the Housing, Town Planning, &c., Act, 1909 (herein-after referred to as "the Act of 1909"), and by section 41 of the Act of 1909, which section is included in Part I. of the Act of 1909, it is enacted as follows:—

"The Local Government Board may by order prescribe the form of any notice, advertisement, or other document to be used in connection with the powers and duties of a local authority or of the Board under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which those forms are applicable."

And whereas by virtue of section 51 of the Act of 1909, in Part I. of that Act the expression "Housing Acts" means the Act of 1890, and any Act amending that Act, including the Act of 1909;

And whereas it is expedient that, in pursuance of the said section 41 of the Act of 1909, forms should be prescribed which shall be used in substitution for the forms prescribed by the Orders:

NOW THEREFORE, we, the Local Government Board, in pursuance of the powers given to us by the statutes in that behalf, by this Order do prescribe the several forms set forth in the second schedule to this Order to be used in connection with the powers and duties of a local authority under Part I. of the Act of 1890; and we hereby declare that the said forms shall be in substitution for the forms prescribed by the Orders described in the first schedule to this Order.

FIRST SCHEDULE.

Order of the Secretary of State dated the 5th day of November, 1890, and addressed to the London County Council and to the Commissioners of Sewers of the City of London.

Order of the Local Government Board dated the 2nd day of October, 1890, and addressed to the several urban sanitary authorities for the time being in England and Wales.

SECOND SCHEDULE.

I.

FORM OF ADVERTISEMENT.

HOUSING OF THE WORKING CLASSES ACTS, 1890 TO 1909.

Advertisement of an Improvement Scheme.

Notice is hereby given that the [1] have in pursuance of the powers vested in them for that purpose by Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, &c,

Appendix II. Act, 1909, made a scheme for the improvement of the area [*or* areas] the limits of which are stated in the schedule hereunder, and which contains [*or* contain] approximately [2] .

A copy of the said scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at † and may be seen at all reasonable hours.

SCHEDULE.[3]

The area to which the scheme relates is bounded as follows :—

On the north by
On the south by
On the east by
On the west by

or

The area to which the scheme relates is bounded by a line commencing (*set out the entire linear boundary*) :

or

The area to which the scheme relates consists of the following streets and other place or parts thereof :

Dated this day of , 19 .

Signature of clerk of local authority________________

Directions for filling up this form.

Insert,—

[1] Description of the local authority.

[2] The aggregate superficial extent of the area or areas.

[3] One of the three alternative forms should be used as may be convenient. If the scheme includes more than one area, the particulars indicated should be given as regards each area.

† *The place of deposit must be within the area or in the vicinity thereof. See section* 7 (*a*) *of the Act of* 1890.

II.

FORM OF NOTICE TO OWNERS AND LESSEES.

HOUSING OF THE WORKING CLASSES ACTS, 1890 TO 1909.

Notice to owner or reputed owner, lessee or reputed lessee, of intention to take lands compulsorily under an Improvement Scheme.

To [1]

TAKE NOTICE that a petition is about to be presented by the [2] to the Local Government Board in pursuance of Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, &c. Act, 1909, praying that an Order may be made confirming an improvement scheme, whereby it is proposed to take compulsorily the lands described in the schedule hereunder, in which lands you are believed to be interested, as owner or reputed owner, or lessee or reputed lessee.

You are therefore hereby required to return to me on or before the day of next an answer in writing stating whether you dissent or not in respect of the taking of the lands described in the said schedule.

A copy of the said scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at † and may be seen at all reasonable hours.

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE.

Name of Street, Court, Alley, or other Place.	Description of Lands ‡ proposed to be taken.	Owner or Reputed Owner.	Lessee or Reputed Lessee.	Occupier.

Dated this day of , 19 .

Signature of clerk of local authority________________

† *The place of deposit must be within the area or in the vicinity thereof. See section* 7 (*a*) *of the Act of* 1890.

‡ "*Lands*" *includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.*

Directions for filling up this form.

Insert,—

[1] Name, residence, or place of business, and description, where known, of owner or reputed owner, lessee or reputed lessee, as the case may require.

[2] Description of local authority.

III.

FORM OF NOTICE TO OCCUPIERS.

HOUSING OF THE WORKING CLASSES ACTS, 1890 TO 1909.

Notice to occupier or occupiers (not being owners or reputed owners or lessees or reputed lessees) of intention to take lands compulsorily under an Improvement Scheme.

To [1] the occupier of the land †

or

[To the occupier or occupiers of the house] ‡ which in the schedule hereunder is described as the lands proposed to be taken.

TAKE NOTICE that a petition is about to be presented by the [2] to the Local Government Board in pursuance of Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, &c. Act, 1909, praying that an Order may be made confirming an improvement scheme, whereby it is proposed to take compulsorily the lands described in the schedule hereunder.

A copy of the said scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at § and may be seen at all reasonable hours.

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE.

Name of Street, Court, Alley, or other Place.	Description of Lands † proposed to be taken.

Dated this day of , 19 .

Signature of clerk of local authority ______________________

Directions for filling up this form.

Insert,—

[1] The name of the occupier.

[2] Description of local authority.

† "*Lands*" *includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.*

‡ *The alternative address within these brackets is available only where the property to be taken is a house.*

§ *The place of deposit must be within the area or in the vicinity thereof. See section* 7 (*a*) *of the Act of* 1890.

Given under the Seal of Office of the Local Government Board, this nineteenth day of November, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

ORDER PRESCRIBING FORMS OF NOTICES AND OTHER DOCUMENTS.

TO THE SEVERAL LOCAL AUTHORITIES IN ENGLAND AND WALES for the purposes of Part I. of the Housing, Town Planning, &c. Act, 1909 ; And to all others whom it may concern.

WHEREAS by section 41 of the Housing, Town Planning, &c. Act, 1909, it is enacted as follows :—

The Local Government Board may by order prescribe the form of any notice, advertisement, or other document, to be used in connection with the

Appendix II. powers and duties of a local authority or of the Board under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which those forms are applicable :

And whereas, by virtue of section 51 of the Housing, Town Planning, &c. Act, 1909, in Part I. of that Act the expression "Housing Acts" means the Housing of the Working Classes Act, 1890, and any Act amending that Act, including the Housing, Town Planning, &c. Act, 1909 :

Now therefore, we, the Local Government Board, by this Order, do prescribe the several forms hereinafter set forth as the forms of certain notices and other documents to be used in connection with the powers and duties of a local authority under the Housing Acts.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 15 (2).

FORM No. 1.

Form of Notice by person authorised by the Local Authority before entry for the purpose of viewing the state and condition of a house to which section 15 *of the Housing, Town Planning, &c. Act,* 1909, *applies.*

To [1] the [2] of the house [3]

Take Notice that in pursuance of sub-section (2) of section 15 of the Housing, Town Planning, &c. Act, 1909, I,[4] being a person duly authorised in writing by the [5] intend, on the † day of 19 , at any time between the hours of § in the forenoon and in the afternoon, to enter the above-mentioned house for the purpose of viewing the state and condition thereof.

Dated this day of , 19 .

Signature__________ } of person
Description__________ } authorised
Residence or place of business__________ } to enter.

Directions for filling up this Form.

Insert

[1] The name and description, where known, of tenant *or* occupier.
[2] "Tenant" *or* "occupier."
[3] Such a description of the house as may be sufficient for its identification.
[4] Name and description of person authorised by the local authority to enter
[5] Description of the local authority.

† *Twenty-four hours' notice must be given.*
§ *Entry must be at reasonable times of the day.*

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 15 (3).

FORM No. 2.

Form of Notice requiring Landlord to execute works in the case of a house to which Section 15 *of the Housing, Town Planning, &c. Act,* 1909, *applies.*

To [1] , the landlord of the house [2]

Take Notice—

That it appears to the [3] that the undertaking implied by virtue of section 15 of the Housing, Town Planning, &c. Act, 1909, to the effect that the above-mentioned house to which that section applies shall be kept by you in all respects reasonably fit for human habitation, has not been complied with ;

And that, in pursuance of sub-section (3) of the said section, the said [3] do hereby require you within a period of † days, ending on the day of , one thousand nine hundred and , to execute the works herein specified as being necessary to make the said house in all respects reasonably fit for human habitation, that is to say, the several works hereinafter set forth, namely [4]—

Dated this day of , 19 .
Signature of clerk of local authority__________

† *A reasonable time, not being less than twenty-one days, must be specified.*

Directions for filling up this form.

Insert—
[1] Name, residence or place of business, and description, where known, of landlord.
[2] Such a description of the house as may be sufficient for its identification.
[3] Description of the local authority.
[4] Description of works to be executed.

NOTE.—By sub-section (4) of section 15 of the Housing, Town Planning, &c. Act, 1909, it is provided that—

Within twenty-one days after the receipt of such notice [*i.e.*, a written notice by the local authority to the landlord pursuant to section 15 (3)] the landlord may by written notice to the local authority declare his intention of closing the house for human habitation, and thereupon a closing order shall be deemed to have become operative in respect of such house.

Sub-section (5) of that section is in these terms—

If the notice given by the local authority is not complied with, and if the landlord has not given the notice mentioned in the immediately preceding sub-section, the authority may, at the expiration of the time specified in the notice given by them to the landlord, do the work required to be done and recover the expenses incurred by them in so doing from the landlord as a civil debt in manner provided by the Summary Jurisdiction Acts, or, if they think fit, the authority may by order declare any such expenses to be payable by annual instalments within a period not exceeding that of the interest of the landlord in the house, nor in any case five years, with interest at a rate not exceeding five pounds per cent. per annum, until the whole amount is paid, and any such instalments or interest or any part thereof may be recovered from the landlord as a civil debt in manner provided by the Summary Jurisdiction Acts.

With respect to appeals, sub-section (6) of the same section enacts as follows :—

A landlord may appeal to the Local Government Board against any notice requiring him to execute works under this section, and against any demand for the recovery of expenses from him under this section or order made with respect to those expenses under this section by the authority, by giving notice of appeal to the Board within twenty-one days after the notice is received, or the demand or order is made, as the case may be, and no proceedings shall be taken in respect of such notice requiring works, order, or demand, whilst the appeal is pending.

And section 39 contains the following provisions—

(1) The procedure on any appeal under this part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(a) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(b) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this part of this Act shall not become operative, until either the time within which an appeal can be made under this part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C.

Appendix II.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 15 (4).

FORM NO. 3.

Form of Notice declaring intention of Landlord to close for Human Habitation a house to which section 15 *of the Housing, Town Planning, &c. Act,* 1909, *applies.*

To the [1]

Whereas by a notice dated the day of , 19 , the local authority in pursuance of sub-section (3) of section 15 of the Housing, Town Planning, &c. Act, 1909, have required the landlord of the house [2] to execute, within the time specified in that notice, such works as are specified in the said notice as being necessary to make the said house in all respects reasonably fit for human habitation :

Now, therefore, I, the landlord, do by this notice declare my intention of closing the said house for human habitation.

As witness my hand this day of , 19 .

Signature——————— of landlord.
Residence or place of business——————— of landlord.
Description——————— of landlord.

Directions for filling up this Form.

Insert—

[1] Description of the local authority.
[2] Such a description of the house as may be sufficient for its identification.

NOTE.—By sub-section (4) of section 15 of the Housing, Town Planning, &c. Act, 1909, it is provided that within twenty-one days after the receipt of the notice of the local authority in pursuance of sub-section (3) of that section, the landlord may by written notice to the local authority declare his intention of closing the house for human habitation, and thereupon a closing order shall be deemed to have become operative in respect of such house.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 15 (5).

FORM NO. 4.

Form of Order declaring Expenses incurred by the Local Authority in the case of a house to which section 15 *of the Housing, Town Planning, &c. Act,* 1909, *applies to be payable by Annual Instalments.*

To [1] the landlord of the house [2]

Whereas by a notice dated the day of , 19 , we, the [3] in pursuance of sub-section (3) of section 15 of the housing, Town Planning, &c. Act, 1909, have required the landlord of the above-mentioned house to execute, within the time specified in that notice, the works specified in the said notice as being necessary to make the said house in all respects reasonably fit for human habitation ;

And whereas the said notice has not been complied with and the landlord has not given in pursuance of sub-section (4) of the said section a notice declaring his intention of closing the said house for human habitation ;

And whereas we, the said [3] in pursuance of sub-section (5) of the same section have done the work required to be done, and have incurred in so doing expenses amounting to the sum of £ : : :

Now therefore we, the said [3] do, by this our Order, declare that the said expenses amounting to the sum of £ : : shall be payable by annual instalments within a period not exceeding † years, with interest at the rate of § pounds per cent. per annum, until the whole amount is paid.

Dated this day of , 19 .

(*To be sealed with the common seal of the local authority.*)

Signature of clerk of local authority ———————

† *The period to be specified must not exceed that of the interest of the landlord in the house, nor in any case five years.*

§ *The rate of interest must not exceed five pounds per cent. per annum.*

Appendix II.

Directions for filling up this Form.

Insert—
[1] Name, residence or place of business, and description, where known, of landlord.
[2] Such a description of the house as may be sufficient for its identification.
[3] Description of the local authority.

NOTE.—By sub-section (5) of section 15 of the Housing, Town Planning, &c. Act, 1909, it is provided that any instalments or interest or any part of any instalments or interest under an order of the local authority declaring their expenses to be payable by annual instalments may be recovered from the landlord as a civil debt provided by the Summary Jurisdiction Acts.

With respect to appeals, sub-section (6) of the same section enacts as follows:—

A landlord may appeal to the Local Government Board against any notice requiring him to execute works under this section, and against any demand for the recovery of expenses from him under this section or order made with respect to those expenses under this section by the authority, by giving notice of appeal to the Board within twenty-one days after the notice is received, or the demand or order is made, as the case may be, and no proceedings shall be taken in respect of such notice requiring works, order, or demand whilst the appeal is pending.

And section 39 contains the following provisions:—

(1) The procedure on any appeal under this part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(a) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(b) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this part of this Act shall not become operative, until either the time within which an appeal can be made under this part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 17 (2).

FORM No. 5.

Form of Closing Order.

To [1] , owner of the dwelling-house [2]

Whereas under sub-section (2) of section 17 of the Housing, Town Planning, &c. Act, 1909, it is the duty of the local authority if, on the representation of the medical officer of health, or of any other officer of the local authority, or other information given, any dwelling-house appears to the local authority to be in a state so dangerous or injurious to health as to be unfit for human habitation, to make a closing order, that is to say, an order prohibiting the use of the dwelling-house for human habitation until in the judgment of the local authority the dwelling-house is rendered fit for that purpose;

And whereas it appears to the [3] on the [4] that the above-mentioned dwelling-house is in a state so dangerous or injurious to health as to be unfit for human habitation;

Appendix II
——

Now, therefore, we, the said [3] in pursuance of sub-section (2) of section 17 of the Housing, Town Planning, &c. Act, 1909, do, by this our order, prohibit the use of the said dwelling-house for human habitation, until, in our judgment, it is rendered fit for that purpose.

Dated this day of , 19 .

(*To be sealed with the common seal of the local authority.*)

Signature of clerk of local authority————————————————

Directions for filling up and adapting this Form.

Insert

[1] Name, residence, or place of business, and description, where known, of owner.
[2] Such a description of the dwelling-house as may be sufficient for its identification.
[3] Description of the local authority.
[4] " Representation of the medical officer of health " *or* " representation of the (*specify the officer*) " *or* " on information given " (*specify the nature and effect.*)

NOTE.—By sub-section (3) of section 17 of the Housing, Town Planning, &c. Act, 1909, it is provided that—

Notice of a closing order shall be forthwith served on every owner of the dwelling-house in respect of which it is made, and any owner aggrieved by the order may appeal to the Local Government Board by giving notice of appeal to the Board within fourteen days after the order is served upon him.

As regards the definition of " owner," the effect of section 49 (2) is to substitute for the definition of owner in section 29 in Part II. of the Housing of the Working Classes Act, 1890, as applied by section 47 of the Act of 1909, the following definition—

" The expression ' owner ' in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this part of this Act, except persons holding or entitled to the rents and profits of such premises under a lease the original term whereof is less than twenty-one years."

With respect to appeals, section 39 contains the following provisions—

(1) The procedure on any appeal under this part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(a) The Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(b) The rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this part of this Act shall not become operative until either the time within which an appeal can be made under this part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 17 (4).

FORM No. 6.

Form of Notice of Closing Order which has become Operative.

To [1] , occupying tenant of the dwelling-house [2]

Take Notice :—

That on the day of one thousand nine hundred and ,[3] in pursuance of the Housing, Town Planning, &c. Act, 1909, made a closing order prohibiting the use for human habitation of the above-mentioned dwelling-house until in the judgment of the local authority the dwelling-house is rendered fit for that purpose ;

And that the closing order has become operative :

And also that in pursuance of sub-section (4) of section 17 of the Housing, Town Planning, &c. Act, 1909, within † days after the service of this notice the said closing order must be obeyed by you, and you and your family must cease to inhabit the said dwelling-house.

Dated this day of , 19

Signature of clerk of local authority ______________________________

Directions for filling up this Form.

Insert—

[1] Name of occupying tenant.

[2] Such a description of the dwelling-house as may be sufficient for its identification

[3] Description of the local authority.

† *The period must be not less than fourteen days after the service of the notice.*

NOTE.—By sub-section (4) of section 17 of the Housing, Town Planning, &c. Act, 1909, it is enacted as follows :—

> Where a closing order has become operative, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house in respect of which the order is made, and, within such period as is specified in the notice, not being less than fourteen days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable on summary conviction to be ordered to quit the dwelling-house within such time as may be specified in the order.

Sub-section (5) of the same section is in these terms :—

> Unless the dwelling-house has been made unfit for habitation by the wilful act or default of the tenant or of any person for whom as between himself and the owner or landlord he is responsible, the local authority may make to every such tenant such reasonable allowance on account of his expense in removing as may be determined by the local authority with the consent of the owner of the dwelling-house, or, if the owner of the dwelling-house fails to consent to the sum determined by the local authority, as may be fixed by a court of summary jurisdiction, and the amount of the said allowance shall be recoverable by the local authority from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 17 (6).

FORM No. 7.

Form of Order Determining Closing Order.

To [1] , owner of the dwelling-house [2]

Whereas on the day of , 19 , in pursuance of the Housing, Town Planning, &c. Act, 1909, a closing order was made by us, the [3] , in respect of the above-mentioned dwelling-house, and by the said closing order, we, the said [3] prohibited the use of the said dwelling-house for human habitation until, in our judgment, the dwelling-house should be rendered fit for that purpose ;

And whereas we, the said [3] are satisfied that the said dwelling-house has been rendered fit for human habitation :

Now therefore we, the said [3] , do hereby determine the closing order aforesaid.

Dated this day of , 19 .

(*To be sealed with the common seal of the local authority.*)

Signature of clerk of local authority ______________________________

Appendix II.

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the local authority.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 17 (6).

FORM No. 8.

Form of Refusal of Local Authority to Determine a Closing Order.

To [1] , owner of the dwelling-house [2]

Take Notice that the [3] , having considered your application to them to determine the closing order made by them in pursuance of the Housing, Town Planning, &c. Act, 1909, on the day of , 19 , in respect of the above-mentioned dwelling-house, have this day refused to determine the closing order.

Dated this day of , 19 .

Signature of clerk of local authority ____________________

Direction for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the local authority.

NOTE.—Sub-section (6) of section 17 of the Housing, Town Planning, &c. Act, 1909, is in these terms—

The local authority shall determine any closing order made by them if they are satisfied that the dwelling-house, in respect of which the order has been made, has been rendered fit for human habitation.

If, on the application of any owner of a dwelling-house, the local authority refuse to determine a closing order, the owner may appeal to the Local Government Board by giving notice of appeal to the Board within fourteen days after the application is refused.

With respect to appeals, section 39 enacts as follows—

(1) The procedure on any appeal under this part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(a) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(b) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this part of this Act shall not become operative, until either the time within which an appeal can be made under this part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 18 (1).

FORM No. 9.

Form of Notice of Time and Place at which the Question of the Demolition of a Dwelling-house will be considered.

To [1] , owner of the dwelling-house [2]

Whereas on the day of , 19 , in pursuance of the Housing, Town Planning, &c. Act, 1909, a closing order was made by the [3] in respect of the above-mentioned dwelling-house, and the said closing order has remained operative for a period of three months:

Take Notice, that the question of the demolition of the said dwelling-house will be considered by the said [3] at on the † day of , 19 , at o'clock in the noon, when any owner of the said dwelling-house will be entitled to be heard.

Dated this day of , 19 .

Signature of clerk of local authority ____________________

Direction for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the local authority.

† *The time must not be less than one month after the service of this notice.*

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 18 (2).

FORM No. 10.

Form of Order for Demolition of Dwelling-house.

To [1] , owner of the dwelling-house [2]

Whereas on the day of 19 , in pursuance of the Housing, Town Planning, &c. Act, 1909, a closing order was made by us, the [3] in respect of the above-mentioned dwelling-house, and the said closing order has remained operative for a period of three months;

And whereas after compliance with the requirements of sub-section (1) of section 18 of the Housing, Town Planning, &c. Act, 1909, and upon consideration of the question of the demolition of the said dwelling-house, we, the said [3] are of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit;

Now therefore, we, the said [3] , in pursuance of sub-section (2) of section 18 of the Housing, Town Planning, &c. Act, 1909, do order the demolition of the dwelling-house aforesaid.

Dated this day of , 19 .

(*To be sealed with the common seal of the local authority.*)

Signature of clerk of local authority ____________________

Direction for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the local authority.

NOTE.—Sub-section (4) of section 18 of the Housing, Town Planning, &c. Act, 1909, is in these terms—

> Notice of an order for the demolition of a building shall be forthwith served on every owner of the building in respect of which it is made, and any owner aggrieved by the order may appeal to the Local Government Board by giving notice of appeal to the Board within twenty-one days after the order is served upon him.

Appendix II.

With respect to appeals, section 39 enacts as follows—

(1) The procedure on any appeal under this part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(a) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(b) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this part of this Act shall not become operative, until either the time within which an appeal can be made under this part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 18 (2).

FORM NO. 11.

Form of Order for Demolition of Building being or being part of a Dwelling-house.

To [1] , owner of the dwelling-house [2]

Whereas on the day of , 19 , in pursuance of the Housing, Town Planning, &c. Act, 1909, a closing order was made by us, the [3] in respect of the above-mentioned dwelling-house, and the said closing order has remained operative for a period of three months;

And whereas after compliance with the requirements of sub-section (1) of section 18 of the Housing, Town Planning, &c. Act, 1909, and upon consideration of the question of the demolition of the said dwelling-house, we, the said [3] are of opinion that the continuance of the [4] is [5] .

Now therefore, we, the said [3] in pursuance of sub-section (2) of section 18 of the Housing, Town Planning, &c. Act, 1909, do order the demolition of the [6] .

Dated this day of , 19 .

(*To be sealed with the common seal of the local authority.*)

Signature of clerk of local authority__________________________

Directions for filling up and adapting this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the local authority.

[4] "Said dwelling-house" *or* "part of the said dwelling-house," as the case may be followed in the latter case by such a description of the part as may be sufficient for its identification.

[5] "A nuisance" *or* "dangerous or injurious to the health of the public," *or* "dangerous or injurious to the health of the inhabitants of the neighbouring dwelling-houses," as the case may be.

[6] "Said dwelling-house" *or* "said part of the said dwelling-house," as the case may be.

NOTE.—Sub-section (4) of section 18 of the Housing, Town Planning, &c. Act, 1909, is in these terms:—

(4) Notice of an order for the demolition of a building shall be forthwith served on every owner of the building in respect of which it is made, and any owner aggrieved

by the order may appeal to the Local Government Board by giving notice of appeal to the Board within twenty-one days after the order is served upon him.

With respect to appeals, section 39 enacts as follows :—

(1) The procedure on any appeal under this part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(a) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(b) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this part of this Act shall not become operative, until either the time within which an appeal can be made under this part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C

HOUSING, TOWN PLANNING, &c. ACT, 1909.

PART I.

Section 18 (3).

FORM No. 12.

Form of Order postponing Operation of Order for Demolition of Dwelling-house.

To [1] , owner of the dwelling-house [2]

Whereas on the day of , 19 , we, the [3] in pursuance of the Housing, Town Planning, &c. Act, 1909, made an order for the demolition of the above-mentioned dwelling-house ;

And whereas [4] , an owner of the said dwelling-house, has undertaken to execute forthwith the works necessary to render the said dwelling-house fit for human habitation, and we, the said [3] consider that the said dwelling-house can be so rendered fit for human habitation

Now, therefore we, the said [3] in pursuance of sub-section (3) of section 18 of the Housing, Town Planning, &c. Act, 1909, do hereby postpone the operation of the said order for a period of † from the date of the said order.

Dated this day of , 19 .

(*To be sealed with the common seal of the local authority.*)

Signature of clerk of local authority ____________________

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the local authority.

[4] Name, residence or place of business, and description, where known, of the owner who undertakes to execute the necessary works.

† *The time must be such time, not exceeding six months, as the local authority think sufficient for the purpose of giving the owner an opportunity of executing the necessary works.*

Given under the Seal of Office of the Local Government Board, this eleventh day of January, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

S. B. PROVIS, *Secretary.*

Appendix II.

HOUSING, TOWN PLANNING, &c. ACT, 1909: REGULATIONS UNDER SECTION 17 (1).

TO THE SEVERAL LOCAL AUTHORITIES IN ENGLAND AND WALES for the purposes of Part II. of the Housing of the Working Classes Act, 1890; And to all others whom it may concern.

WHEREAS by sub-section (1) of section 17 of the Housing, Town Planning, &c. Act, 1909, it is enacted that it shall be the duty of every local authority within the meaning of Part II. of the Housing of the Working Classes Act, 1890 (herein-after referred to as "the local authority") to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and that for that purpose it shall be the duty of the local authority, and of every officer of the local authority, to comply with such regulations and to keep such records as may be prescribed by the Local Government Board.

NOW THEREFORE, we, the Local Government Board, in pursuance of the powers given to us in that behalf, by this Order, prescribe the following regulations; that is to say:—

ARTICLE I.—(1) The local authority shall as early as practicable after the date of this Order take into consideration the provisions of sub-section (1) of section 17 of the Act of 1909, and shall determine the procedure to be adopted under these regulations, to give effect to the requirements of that sub-section in regard to the inspection of their district from time to time.

(2) The local authority shall as part of their procedure make provision for a thorough inspection to be carried out from time to time according to the varying needs or circumstances of the dwelling-houses or localities in the district of the local authority.

(3) The local authority shall cause to be prepared from time to time by the medical officer of health, or by an officer designated by them but acting under his direction and supervision, a list or lists of dwelling-houses the early inspection of which is, in the opinion of the medical officer of health, desirable. The list or lists may, if thought fit, relate to the dwelling-houses within a defined area of the district without specifying each house separately therein.

ARTICLE II.—The inspection under and for the purposes of sub-section (1) of section 17 of the Act of 1909 shall be made by the medical officer of health, or by an officer designated by the local authority but acting under his direction and supervision, and the officer making inspection of any dwelling-house shall examine the state of the dwelling-house in relation to the following matters, namely:—

(1) The arrangements for preventing the contamination of the water supply.
(2) Closet accommodation.
(3) Drainage.
(4) The condition of the dwelling-house in regard to light, the free circulation of air, dampness, and cleanliness.
(5) The paving, drainage, and sanitary condition of any yard or out-houses belonging to or occupied with the dwelling house.
(6) The arrangements for the deposit of refuse and ashes.
(7) The existence of any room which would in pursuance of sub-section (7) of section 17 of the Act of 1909 be a dwelling-house so dangerous or injurious to health as to be unfit for human habitation.
(8) Any defects in other matters which may tend to render the dwelling-house dangerous or injurious to the health of an inhabitant.

ARTICLE III.—Records of the inspection of dwelling-houses made under and for the purposes of sub-section (1) of section 17 of the Act of 1909 shall be prepared under the direction and supervision of the medical officer of health, and shall be kept by the officer of the local authority making the inspection or by some other officer appointed or employed for the purpose by the local authority.

The records may be kept in a book or books or on separate sheets or cards, and shall contain information, under appropriate headings, as to :—

1. The situation of the dwelling-house, and its name or number,
2. The name of the officer who made the inspection,
3. The date when the dwelling-house was inspected,
4. The date of the last previous inspection and a reference to the record thereof,
5. The state of the dwelling-house in regard to each of the matters referred to in Article II. of these regulations,
6. Any action taken by the medical officer of health, or other officer of the local authority, either independently or on the directions of the local authority,
7. The result of any action so taken,
8. Any further action which should be taken in respect of the dwelling-house.

ARTICLE IV.—The local authority shall, as far as may be necessary, take into consideration at each of their ordinary meetings the records kept in pursuance of Article III. of these regulations, and shall give all such directions and take all such action within their powers as may be necessary or desirable in regard to any dwelling-house to which the records relate, and a note of any directions so given and the result of any action taken shall be added to the records.

ARTICLE V.—The medical officer of health shall include in his annual report information and particulars in tabular form in regard to the number of dwelling-houses inspected under and for the purposes of section 17 of the Act of 1909, the number of dwelling-houses which on inspection were considered to be in a state so dangerous or injurious to health as to be unfit for human habitation, the number of representations made to the local authority with a view to the making of closing orders, the number of closing orders made, the number of dwelling-houses the defects in which were remedied without the making of closing orders, the number of dwelling-houses which after the making of closing orders were put into a fit state for human habitation, and the general character of the defects found to exist. He shall also include any other information and particulars which he may consider desirable in regard to the work of inspection under the said section.

ARTICLE VI.—The medical officer of health and any other officer of the local authority shall observe and execute all lawful orders and directions of the local authority in regard to or incidental to the inspection of the district of the local authority under and for the purposes of section 17 of the Act of 1909, and the execution of these regulations.

ARTICLE VII.—In these regulations " the Act of 1909 " means the Housing, Town Planning, &c. Act, 1909.

ARTICTE VIII.—These regulations may be cited as the Housing (Inspection of District) Regulations, 1910.

Given under the Seal of Office of the Local Government Board, this second day of September, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

HOUSING, TOWN PLANNING, &c. ACT, 1909: REGULATIONS UNDER SECTION 19 (7).

For these see p. 2596, *post*.

HOUSING, TOWN PLANNING, &c. ACT, 1909: REGULATIONS UNDER SECTION 74.

TO THE SEVERAL LOCAL AUTHORITIES IN ENGLAND AND WALES for the purposes of the Housing, Town Planning, &c. Act, 1909; and to all others whom it may concern.

WHEREAS by section 74 of the Housing, Town Planning, &c. Act, 1909 [*the section* (*see* ante, *p.* 1194) *is set out*].

NOW THEREFORE, we, the Local Government Board, after consultation with

Appendix II. the Commissioners of Works, do hereby make the following regulations under and for the purposes of the above-cited section 74, that is to say,—

The prescribed distance for the purposes of subsection (1) of section 74 of the Act shall, in the case of Windsor Castle, Windsor Great Park, and Windsor Home Park, be two miles, and, in the case of any other royal palace or park, be half-a-mile.

Given under the Seal of Office of the Local Government Board, this second day of September, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

HOUSING, TOWN PLANNING, &c. ACT, 1909: RULES WITH REFERENCE TO APPEALS.

WHEREAS by section 39 in Part I. of the Housing, Town Planning, &c. Act, 1909 [*the section* (*see* ante, *p.* 1176) *is set out*].

NOW THEREFORE, we, the Local Government Board, for the purpose of determining the procedure on any appeal under Part I. of the Housing, Town Planning, &c. Act, 1909, do hereby make the following rules, that is to say—

RULE 1.—Every appeal to the Local Government Board shall be made to and be brought before the Local Government Board by means of a letter, or other representation in writing (hereinafter referred to as a "statement of appeal") which shall be addressed and posted, or shall be otherwise given, sent, or delivered to the Local Government Board at their office, and of which a copy shall, at the same time, be addressed and posted, or shall be otherwise given, sent, or delivered to the local authority at their office.

RULE 2.—Every statement of appeal shall be signed by or on behalf of every person (hereinafter referred to as an "appellant") who makes or who joins in making the appeal, or, where an appellant is a corporation, or an association or body of persons unincorporate, shall be signed by an officer of or other person described as duly authorised by the corporation, association, or body, and shall bear a date corresponding to that of the day on which the requisite signature is affixed to the statement of appeal.

RULE 3.—Every statement of appeal shall set forth in detail the grounds of the appeal, all material facts in relation to the description or position of every appellant as a party to the appeal, and to his interest in any dwelling-house or premises to which the appeal has reference, or to his interest in or to such other concern or association as he may have with any subject-matter of the appeal, and also all material facts in relation to any such proceeding by a local authority or by an officer of or person authorised by a local authority as affects the grounds of appeal, the appellant, the interest of the appellant in any dwelling-house or premises to which the appeal has reference, or the interest of the appellant in or such other concern or association as he may have with the subject-matter of the appeal.

RULE 4.—Every statement of appeal shall be accompanied by every such document as an appellant has in his possession or at his disposal, and is able to furnish, and as consists of, or comprises, or gives particulars of, any notice, order, demand, or apportionment relating to the grounds or subject-matter of the appeal, or otherwise relating to any material facts set forth in the appeal; and shall show by appropriate particulars in the statement of appeal, or by an appropriate entry on any such document accompanying the statement of appeal, the date of service upon an appellant of the notice, order, demand, or apportionment.

RULE 5.—Where an appeal appears to the Local Government Board to require, for its due consideration, that information, other than such information as is set forth in the statement of appeal, or is supplied by means of any

Appendix II.

document accompanying the statement of appeal, or by means of any statement by or correspondence with an appellant or the local authority respecting the appeal, shall be furnished to the Local Government Board, the requisite information shall, on the written request of the Local Government Board, be furnished by an appellant or by the local authority, as the case may be, in such manner, in such form, and within such time as the Local Government Board in writing specify.

Rule 6.—Where the Local Government Board on an appeal are satisfied that there is reasonable cause for dispensing, either conditionally or unconditionally, with compliance with any requirement of the foregoing rules, or for varying any such requirement, the Local Government Board may by a notification in writing to an appellant or to the local authority, as the case may be, give the necessary dispensation to the appellant or to the local authority, as the case may be, or may make and give effect to the necessary variation and to any incidents or consequences of that variation ; and, in the case of any such dispensation when given subject to any condition, or in the case of any such variation, an appellant or the local authority, as the case may be, shall comply in all respects with the condition or variation, and with any requirement of the notification by the Local Government Board, as if the condition, variation, or requirement formed part of the foregoing rules.

Rule 7.—Where the Local Government Board, before considering an appeal, require an appellant to deposit a sum to cover the costs of the appeal, the sum shall be—

(a) In every case in which the office of the local authority is at a distance not exceeding fifty miles from the office of the Local Government Board—

Seven pounds ; and

(b) In every other case—

Ten pounds.

For the purposes of this rule, the distance shall be measured by a straight line drawn on the third edition of the map of the Ordnance Survey on the scale of $\frac{1}{63360}$, or one mile to one inch, from the nearest point in one office to the nearest point in the other office.

Rule 8.—Except so far as this rule otherwise provides and so far as regards any costs incurred by the Local Government Board in relation to a public local inquiry held in pursuance of these rules, all costs of and incidental to an appeal shall, when incurred by an appellant or by the local authority, be borne by the appellant or by the local authority as the case may be : Provided that the Local Government Board may, by any Order made under subsection (1) of section 39 of the Housing, Town Planning, &c. Act, 1909, direct by whom any such costs, when incurred by an appellant or by the local authority, shall be borne ; and that nothing in this rule shall have effect in contravention or in derogation of any such direction.

Rule 9.—The Local Government Board shall not dismiss an appeal without having first held a public local inquiry.

Where the Local Government Board are required to hold a public local inquiry, and written notice of the time and place at which the inquiry will be held has been given by the Local Government Board to every appellant and to the local authority, a printed copy of the notice shall be posted by the local authority at every place specified in writing by the Local Government Board as necessary or suitable for the purpose.

Given under the Seal of Office of the Local Government Board, this eleventh day of January, in the year one thousand nine hundred and ten.

(L.S.) John Burns, *President.*

S. B. Provis, *Secretary.*

Appendix II.

HOUSING, TOWN PLANNING, &c. ACT, 1909: REGULATIONS FOR COMPULSORY PURCHASE OF LAND.

To the several Local Authorities in England and Wales for the purposes of Part III. of the Housing of the Working Classes Act, 1890; To the several Local Authorities in England and Wales for the purposes of Part II. of the Housing, Town Planning, &c. Act, 1909; And to all others whom it may concern.

Whereas [*section* 2 (1), (2), *section* 60 (1), (2) *and Schedule I.* (1), (2), (4), (5), (6), (12), (13), *of the Act are recited*].

Now therefore, in the exercise of the powers in that behalf, we do, by this our Order, direct and prescribe as follows; that is to say,—

Article I.—An order made by a local authority under the First Schedule to the Act (hereinafter referred to as "the compulsory order") shall be in the form set forth in the schedule hereto, or in a form to the like effect.

Article II.—(1) Before submitting the compulsory order to us for confirmation, the local authority shall cause the same to be published by advertisement in two successive weeks in one or more of the local newspapers circulating in the district of the local authority and in the parish or parishes in which the land to which the compulsory order relates is situated.

(2) The advertisements shall be headed respectively "First Advertisement" and "Second and Last Advertisement," and the first of the said advertisements shall be published not later than the tenth day after the making of the compulsory order.

(3) Each of the said advertisements shall contain in addition to a copy of the compulsory order a notice setting out the following particulars:—

(a) a statement that any objection to the compulsory order must be presented to us within the period of one calendar month from and after the date of the publication of the second and last advertisement; and

(b) a statement of the period, times, and place or places during and at which the deposited plan referred to in the schedule to the compulsory order may be inspected by or on behalf of any person interested in the land to which the compulsory order relates.

(4) The plan referred to in the schedule to the compulsory order shall be deposited by the local authority not later than the tenth day after the making of the compulsory order at a place convenient for the purposes of inspection, and shall be kept deposited thereat for a period not being less than one calendar month from the date of the publication of the second and last advertisement and the said plan shall be open for inspection by any person interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any such person inspecting the said plan any necessary explanation or information in regard thereto.

Article III.—(1) The local authority shall, not later than the tenth day after the making of the compulsory order, cause notice thereof to be given to every owner, lessee, and occupier of the land to which the compulsory order relates, and every such notice shall include a printed copy of the compulsory order, to which shall be appended a notice containing the particulars mentioned in sub-division (3) of Article II. of this Order.

(2) The local authority shall furnish a printed copy of the compulsory order, free of charge, to any person interested in the land to which the compulsory order relates, upon his applying for the same.

Article IV.—The period within which an objection to a compulsory order may be presented to us by a person interested in the land to which the compulsory order relates shall be the period of one calendar month from and after the date of the publication of the second and last advertisement of the compulsory order.

ARTICLE V.—(1) The local authority shall as soon as practicable after the confirmation of the compulsory order cause a printed copy of the compulsory order as confirmed to be served on every owner, lessee, and occupier of the land to which the compulsory order relates.

(2) A printed copy of the compulsory order as confirmed shall be furnished free of charge by the local authority to any person interested in the land authorised to be purchased upon his applying for the same, and a copy of any plan to which reference is made in the compulsory order as confirmed shall also be furnished by the local authority to any such person upon his applying for such copy and paying the reasonable cost of preparing the same.

ARTICLE VI.—Every notice or other document which in pursuance of sub-division (1) of Article III. or of sub-division (1) of Article V. of this Order is required to be given or served by the local authority to or on an owner, lessee, or occupier, shall be served :—

(a) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent ; or
(b) by leaving the same at the usual or last known place of abode of such person as aforesaid ; or
(c) by post as a registered letter addressed to the usual or last known place of abode of such person ; or
(d) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post as a registered letter addressed to such clerk or secretary at his office.

ARTICLE VII.—This Order may be cited as the Housing, &c. (Form of Compulsory Purchase Order, &c.) Order, 1911.

SCHEDULE.

The * hereby make the following order :—

1. The provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement are, subject to the terms of the Housing, Town Planning, &c. Act, 1909, and of this order, hereby put in force as respects the purchase by the * of the lands described in the schedule hereto for the † .

2. This Order shall have effect as if there were incorporated therewith, subject to the necessary adaptations, the Lands Clauses Acts (except section 127 of the Lands Clauses Consolidation Act, 1845), and sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Local Government Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of the First Schedule to the Housing, Town Planning, &c. Act, 1909, apply accordingly.

3.‡ If any of the land described in the schedule to this Order is glebe land or other land belonging to an ecclesiastical benefice, any sums agreed upon or awarded for the purchase of any such land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting any such land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a scale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

[3.] This order shall come into operation from and after the date of its confirmation by the Local Government Board.

[4.] This order may be cited as the § Order, 19 .

* Here insert title of the authority making the order.

† Here insert "purposes of Part III. of the Housing of the Working Classes Act, 1890," or "purpose of [a town planning scheme] under Part II. of the Housing, Town Planning, &c. Act, 1909," as the circumstances require. In the case of a town planning scheme, the name of the authority who made the scheme and the date or short title of the scheme should be stated.

‡ Insert this article where the lands described in the schedule to the order include glebe land or other land belonging to an ecclesiastical benefice.

§ Here insert a suitable short title.

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THE SCHEDULE ABOVE REFERRED TO.

Numbers on Plan deposited at the Offices of the*	Quantity, Description and Situation of the Lands.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.

Given under the seal of the *
this day of 19 .

(L.S.)

* Here insert title of the authority making the order.

Given under the Seal of Office of the Local Government Board, this fourteenth day of June, in the year one thousand nine hundred and eleven.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

HOUSING, TOWN PLANNING, &c. ACT, 1909: RULES WITH REFERENCE TO COSTS OF ARBITRATIONS.

WHEREAS [*paragraph* (9) *of the First Schedule to the Housing, Town Planning, &c. Act,* 1909, *is recited*].

NOW THEREFORE, we, with the concurrence of the Lord Chancellor, for the purpose of fixing the scale of costs to be applicable on an arbitration under the First Schedule to the Act, do hereby make the following rules, that is to say :—

RULE 1.—Where the compensation awarded by the arbitrator to the claimant does not exceed the sum specified in the first column of the Scale No. 1 set forth in the schedule hereto, the sum payable to the claimant for his costs of the arbitration shall be the sum specified in the second column of such scale, which sum shall include and cover all disbursements, except for the attendances of witnesses, for which attendances the sums specified in the third column of such scale shall be allowed. No charge for briefs to, or attendance of, counsel shall be allowed.

RULE 2.—Where the compensation awarded by the arbitrator exceeds the sum of three hundred pounds, but does not exceed the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 2 set forth in the schedule hereto, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

RULE 3.—Where the compensation awarded by the arbitrator exceeds the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed, and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 3 set forth in the schedule hereto, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

RULE 4.—So much of the First Schedule to the Arbitration Act, 1889, as provides that the arbitrator may award costs to be paid as between solicitor and client, shall not apply to an arbitration to which these rules apply. In any case in which the arbitrator determines the amount of costs to be paid to the claimant in the arbitration these rules shall apply to and govern such determination of costs by the arbitrator.

RULE 5.—These rules shall not apply to an arbitration in which an arbitrator has been appointed before the rules come into operation.

RULE 6.—Nothing in these rules shall authorise an arbitrator to hear counsel or expert witnesses, except in such cases as the Local Government Board direct, and if counsel or expert witnesses are heard by an arbitrator without such direction, no costs shall be allowed in respect thereof.

RULE 7.—(1) If, having regard to the nature or importance of the case, the interests of the parties, the general conduct of the proceedings, and the skill, labour, and responsibility involved, the taxing officer shall on special grounds consider to be inadequate the cost or allowances provided by any of the scales set forth in the schedule hereto, he may make such further or increased allowances as he shall in his discretion consider reasonable.

(2) The taxing officer may in any case where the owner or claimant is not represented by a solicitor on the arbitration make such allowance as he may consider reasonable towards the charges or expenses incurred by the owner or claimant in connection with the arbitration, but not exceeding in the aggregate the maximum amount which could otherwise have been allowed under the scale set forth in the schedule hereto, which is applicable to the case.

RULE 8.—These rules and the scales of costs set forth in the schedule hereto shall not apply to the fees or remuneration properly payable to or charged by the arbitrator, which fees, if and when paid by the claimant, shall be recoverable by him from the party who is liable to pay the same.

RULE 9.—In these rules :—

(1) "The arbitrator" means an arbitrator appointed under the First Schedule to the Act.

(2) "Taxing officer" includes the arbitrator when costs are determined by him.

RULE 10.—These rules shall come into operation on the ninth day of September, 1912, and may be cited as the Housing, &c. (Costs of Arbitration) Rules, 1912.

SCHEDULE.

SCALE NO. 1.

Scale of fixed costs where the compensation awarded does not exceed £300 :—

Compensation awarded. 1.	Amounts of Costs other than for Witnesses. 2.	Costs of attendance of Witnesses. 3.
	£ s. d.	£ s. d.
Any sum not exceeding fifty pounds . . .	3 3 0	2 2 0
Any sum exceeding fifty pounds, but not exceeding one hundred pounds	5 5 0	3 3 0
Any sum exceeding one hundred pounds, but not exceeding three hundred pounds :—		
For every fifty pounds or part of fifty pounds exceeding one hundred pounds the following sums in addition to those prescribed for compensation which exceeds fifty pounds . .	2 2 0	1 1 0

SCALE NO. 2.

Costs where the compensation awarded exceeds £300, but does not exceed £500 :—

(a) The amount payable to the claimant for the costs of the arbitration shall be the sum of £20, which sum shall include all charges and disbursements of every kind, except those hereinafter specially mentioned.

*(b) In addition to the said sum of £20, there shall be allowed to the claimant the charges and expenses of one expert witness for qualifying and giving evidence as to the

* See Rule 6 as to employment of counsel and expert witnesses.

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value of the claimant's lands, or interest in land, or the amount of compensation to which the claimant is entitled: which charges and expenses shall be taxed and allowed in accordance with the provisions of Scale No. 3, hereinafter set forth.

*(c) If counsel is employed by the claimant, there shall be allowed to him, in addition for preparing and delivering briefs to and obtaining the attendance of counsel, such fees as, having regard to all the circumstances of the case, the taxing officer shall think fit.

SCALE No. 3.

Scale of costs and allowances where the compensation exceeds £500:—

	£	s.	d.
1. Instructions for claim and attendances on owner or claimant in respect thereof	1	1	0
2. Correspondence and attendance on the clerk to the council or council's solicitor thereon, including drawing and copy claim	1	1	0
*3. Attending on each witness (if two witnesses) instructing him to qualify and subsequently perusing his report, or if the arbitrator is a surveyor on one witness only	0	13	4
4. Attending on the arbitrator and on the clerk to the council or council's solicitor arranging appointment for the day of hearing	0	13	4
5. Notice to each witness to attend	0	5	0
6. If a view is reasonably necessary attendances on the arbitrator and the clerk to the council or council's solicitor arranging for view	0	13	4
7. Attending view with them	3	3	0
8. Paid travelling expenses.			
*9. If counsel employed, instructions to counsel to attend view	0	6	8
*10. Paid his fee and clerk	5	10	0
11. Instructions for attending before the arbitrator and to conduct the claimant's case	2	2	0
*12. If counsel employed in lieu of last item instructions for brief	2	2	0
*13. Drawing case and minutes of evidence, at per folio, 1*s.*; and if counsel attending, brief copy for counsel at per folio, 4*d.*			
*14. Paid counsel's fee.			
*15. Attending him	0	6	8
*16. Paid counsel's conference fee	1	6	0
Ditto ditto (if a leader)	2	7	0
*17. Attending to appoint and on conference	1	0	0
18. Solicitor attending reference and conducting case, case completed on each side (solicitor and clerk)	5	5	0
19. If reference not held in town in which the solicitor carries on business, for hotel expenses of solicitor	1	1	0
Ditto ditto of clerk	0	15	0
(And for travelling expenses the sum actually paid.)			
20. If reference not concluded, for each subsequent day the same charges.			
*21. If counsel in attendance, solicitor attending each day on reference	3	3	0
22. And if not in solicitor's town, for hotel expenses (and travelling expenses actually paid)	1	1	0
*23. Paid witnesses (according to the scale or allowances in the Supreme Court Taxing Office).			
24. Drawing bill of costs and copy for taxing, at per folio, 8*d.*			
25. Copy for the clerk to the council or council's solicitor, at per folio, 4*d.*			
26. Notice of taxing	0	4	0
27. Attending taxing	0	13	4
28. Paid taxing (the fee payable in the Supreme Court Taxing Office on taxing costs).			
29. Letters and messengers	1	1	0
30. In agency cases for correspondence between solicitor and London agent	1	1	0

* See Rule 6 as to employment of counsel and expert witnesses.

Given under the Seal of Office of the Local Government Board, this fifth day of September, in the year one thousand nine hundred and twelve.

JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

I concur,
HALDANE, C.

HOUSING, TOWN PLANNING, &c. ACT, 1909: PROCEDURE REGULATIONS (*i*).

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TO THE SEVERAL LOCAL AUTHORITIES in England and Wales for the purposes of Part II. of the Housing, Town Planning, &c. Act, 1909; And to all others whom it may concern.

WHEREAS [*sections* 54, 55, 56, 65 (1), 66 (1), *and Schedule V. are recited*].

NOW THEREFORE, we, the Local Government Board, in pursuance of the powers given to us in that behalf, by this Order, make the following regulations; that is to say:—

PROCEDURE ANTERIOR TO AND FOR THE PURPOSE OF AN APPLICATION FOR AUTHORITY TO PREPARE OR ADOPT A SCHEME.

Notices of intention to apply for authority to prepare or adopt a scheme: Deposit of Map No. 1 showing land proposed to be included.

ARTICLE I.—(a) At least two months before making an application to the Local Government Board (hereinafter referred to as "the Board") for authority to prepare a town planning scheme, or for authority to adopt a town planning scheme proposed by all or any of the owners of any land with respect to which the local authority might themselves have been authorised to prepare a scheme, the local authority shall serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land proposed to be included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of that land is comprised, and also, if any main road is or may be affected by the proposed scheme, upon the county council, a notice of their intention to make such application. The local authority shall also give notice of their intention to make such application by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least two months before making the application.

(b) The local authority shall, not later than the date on which the first of the said notices is given, deposit at a place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than one month from the date on which the latest of the said notices is given, a map of the land proposed to be included in the said scheme. The said map (to be marked and known as "Map No. 1") shall be on the scale of 25·344 inches to the mile, and shall be open for inspection by any person interested, without payment of any feee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any person inspecting the map any necessary explanation in regard thereto.

(c) The said notices shall describe the land proposed to be included in the scheme and shall state the place at which a map of the land is deposited and the period and times during which the same will be open for inspection by any person interested.

(d) A certified copy of Map No. 1 shall be furnished by the local authority to the council of any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised.

Special notice to councils interested [Section 56 (2) (b) of Act of 1909].

ARTICLE II.—With the view of securing that notice of the proposal to apply for authority to prepare or adopt a scheme in respect of any land shall be given at the earliest stage possible to any council interested in the land, the local authority, independently of the notices required to be given as aforesaid, shall, within seven days after they have decided to consider a proposal for authority to prepare or adopt a scheme in reference to any area of land, serve notice of their decision upon any council interested in the land.

Consideration by local authority of objections, &c. Conferences: Meeting of parties interested.

ARTICLE III.—The local authority before making an application to the Board for authority to prepare or adopt a scheme shall consider any objections or representations made to them in writing in reference to the proposed scheme whether by owners or other persons interested in the land proposed to be

(*i*) These regulations are in force only with respect to the adoption by local authorities of schemes proposed by owners. They have been replaced by the Regulations dated 11th February, 1914, so far as they applied to the preparation of schemes by local authorities. For these later Regulations, see *post*, p. 2449.

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The local authority shall arrange for at least one meeting being held, at which all such owners, persons, or councils as aforesaid shall be entitled to attend or be represented, for the purpose of considering the proposed scheme. Notice of the time and place fixed for such meeting shall be served by the local authority upon all such owners, persons, or councils so far as they can ascertain the same, not less than fourteen days before the time fixed for the meeting.

The mayor (if the local authority are the town council of a borough) or the chairman of the council (if the local authority are the London County Council or an urban or rural district council) shall be the president of the said meeting, or, in the event of the mayor or chairman being unable or unwilling to act, any person appointed for the purpose by the local authority shall be the president, or, in default of such appointment, the meeting shall choose some person present at the meeting to be president thereof. On opening the meeting the president, or a member or officer of the local authority, shall give such explanation of the proposed scheme as he thinks expedient.

Application to the Board to be by resolution: Map No. 2 to be prepared in connection with resolution.

ARTICLE IV.—(a) An application to the Board by a local authority for authority to prepare or adopt a scheme shall be made by a resolution of the local authority.

(b) The resolution shall define, by reference to a map prepared on a scale of not less than 25·344 inches to the mile (to be marked and known as "Map No. 2"), the land in reference to which it is desired to prepare or adopt the scheme, and shall state whether the land is entirely within the area of the local authority or wholly or partly within a neighbouring area. In addition to any other particulars required by these regulations to be shown thereon the said map shall show clearly by means of boundary lines sharply defined in colour the area of the land included in the proposed scheme, distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority. If the area of the land includes any piece of land already built upon or any piece of land not likely to be used for building purposes, any such lands shall be indicated on the map by distinctive colours and any necessary reference notes, and there shall also be shown on the map in like manner the positions of any buildings which have been erected on the land or of any buildings which are in course of erection.

(c) A copy of the resolution certified by the clerk to the local authority shall be transmitted without delay to the Board by the clerk, with a covering letter, and accompanied by a statement as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

Documents, &c., to accompany application: Map No. 3 to be prepared.

ARTICLE V.—The application to the Board shall be accompanied by:—

(a) The statutory declaration and exhibits required by Article XXXI. of these regulations in proof of compliance with the requirements of Article I.

(b) Map No. 2 or a copy thereof duly certified by the clerk to the local authority.

(c) A map on the scale of 1 inch to the mile (to be marked and known as "Map No. 3"), showing, by distinguishing colours or boundary lines in colour, the district of the local authority, the land included in the proposed scheme, and the area within a distance of five miles from any part of the district of the local authority:

Provided that, if the scheme is proposed to be made or adopted by the council of a rural district, it shall not be obligatory that the map shall extend to the whole of the rural district, but it shall extend to the contributory place or places therein in which any part of the land included in

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the scheme is comprised, and to the area within a distance of five miles from such place or places:

Provided also that, if in any case the land included in a scheme is wholly outside the district of the local authority, the map shall show at least the area within a distance of five miles from any part of such land.

(d) A copy of all objections made in writing in reference to the proposed scheme so far as the objections have not been withdrawn or removed.

(e) If the application relates to the adoption of a scheme proposed by owners, a copy of the scheme so proposed and a statement of any modifications which the local authority are of opinion should be made in the scheme.

Additional particulars to be shown on Map No. 2 in a case of preparation of scheme by local authority.

ARTICLE VI.—If the application relates to the preparation of a scheme by the local authority there shall be shown on Map No. 2 the lines and widths of the principal roads which the local authority propose shall be made as part of the scheme, the connections of the proposed roads with existing roads, and the lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity. Any existing roads or ways which it would be necessary to stop up or divert shall also be indicated on the said map, and if the local authority contemplate that the scheme to be prepared shall provide for certain areas being used for the purpose of open spaces or for other special purposes those areas shall as far as possible be indicated on the said map.

Additional particulars to be shown on Map No. 2 in a case of adoption of scheme by local authority.

ARTICLE VII.—If the application relates to the adoption of a scheme proposed by owners of land there shall be shown on Map No. 2 the lines and widths of all roads proposed as part of the scheme, the connections of the proposed roads with existing roads, and the lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity. Any existing roads or ways which it is proposed to stop up or divert shall be indicated on the said map, which shall also indicate the areas proposed by the scheme to be allocated for the purpose of open spaces, private or public, or to be used for any other special purposes. The said map shall also show all such further particulars in relation to the scheme proposed to be adopted as are suitable for indication thereon, *e.g.*, any proposals as to lines of sewers, or of pipes or mains for the supply of water, gas, or electricity.

Information to be furnished to the Board in connection with all applications.

ARTICLE VIII.—In connection with an application for authority to prepare or adopt a scheme, the local authority shall furnish the Board with a statement or statements giving the particulars and information hereinafter indicated:—

(a) A general description of the scheme including information as to the general character of the land proposed to be included in the scheme, the extent to which the scheme applies to land in course of development, the extent to which it applies to land likely to be used for building purposes, and, as regards the last-mentioned land, the grounds for considering that the land is likely to be so used.

(b) The reasons on which the local authority rely in support of their application.

(c) If the scheme includes land already built upon or land not likely to be used for building purposes, the reasons which, in the opinion of the local authority, render it necessary or desirable to include such lands in the scheme; particulars of the buildings on the lands; such information as the local authority may be in a position to give in regard to the extent to which it would be necessary to provide for the demolition or alteration of the buildings for the purpose of carrying the scheme into effect; and, as regards any land not likely to be used for building purposes, the grounds on which it is considered that such land would not be so used.

(d) Information as to the arrangements in operation in the area of the local authority in regard to sewerage, drainage and sewage disposal, water supply and lighting, and the like information in regard to the area of any other local authority in which any part of the land included in the scheme is comprised, and also information to show to what extent the arrangements as to sewerage, drainage, and sewage disposal would be available or would require alteration or modification for the purposes of the area included in the scheme. If any company, whether statutory or otherwise, is supplying

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or has power to supply water, gas, or electricity in the area included in the scheme, it should be so stated and particulars given in regard thereto.

(e) If the area of the land included in the scheme is not wholly within the area of the local authority making the application, information shall be supplied as to the proposals in regard to the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works which under such scheme, or under Part II. of the Act of 1909, may have to be executed by a local authority.

(f) Information as to any monuments or ancient monuments, within the meaning of the Ancient Monuments Protection Acts, 1882 to 1900, situate within the area included in the scheme, and as to the manner in which they would be affected.

(g) If any land or property of any Government department would be affected by the scheme, particulars in regard to any such property and as to the Government departments concerned.

Additional information to be furnished to the Board in a case of adoption of scheme by local authority.

ARTICLE IX.—In connection with an application for authority to adopt a scheme, the local authority shall furnish the Board with a statement or statements giving the additional particulars and information hereinafter indicated :—

(a) The names and addresses of the owners, lessees, and occupiers of each parcel of the land included in the scheme, and the approximate extent of each such parcel.

(b) Information showing in what respects the proposals in the scheme would involve the suspension of any statutory enactments, byelaws, regulations or other provisions which are in operation in the area included in the scheme.

(c) Information as to the extent to which it may be contemplated or necessary under the scheme that land included in the scheme shall be acquired (1) by the local authority making the application or (2) by any other local authority.

(d) Definite information as to whether any of the owners by whom the scheme is proposed will, in the event of the scheme being adopted by the local authority and approved by the Board, claim compensation on the ground that his property would be injuriously affected by the making of the scheme; and particulars of any information in the possession of the local authority in regard to the probability of any other person making a claim for compensation on that ground.

(e) If, in the opinion of the local authority, any property will be increased in value by the making of the proposed scheme, information as to such property and as to the estimated increase in value.

Estimate as to cost of scheme: Information as to area, population, rates, debt, &c.

ARTICLE X.—(a) In connection with an application for authority to prepare or adopt a scheme the local authority shall state as nearly as may be practicable the estimated cost of carrying out the scheme, so far as the cost is expected to be borne by (1) the local authority making the application, and (2) any other local authority. The local authority shall also furnish the Board with such information as they may require as to the manner in which the estimated cost is arrived at.

(b) Subject to the proviso hereinafter contained, the local authority shall also furnish a statement showing the following particulars with respect to the district of the local authority, that is to say :—

(i.) the acreage ;

(ii.) the population according to the last census ;

(iii.) the rateable value for the purposes of the poor rate ;

(iv.) the amount in the £. of every rate levied during the three last preceding financial years ;

(v.) the amount of the balances of the outstanding loans contracted by the local authority and the sum included in such amount in respect of loans for sanitary purposes ; and

(vi.) the amount of the loans sanctioned but not raised though proposed to be raised, and the sum included in such amount in respect of loans for sanitary purposes :

Provided that if it is proposed that the cost of the scheme to be borne by the local authority shall be charged upon any contributory place or

places in their district the particulars required under heads i., ii., iii., and iv. hereof shall be given with respect to such place or places only.

(c) If any part of the cost of the scheme is expected to be borne by a local authority other than the local authority making the application, the first-mentioned local authority shall make a statement showing in regard to their district the several particulars indicated in paragraph (b) of this article, and shall supply the same to the last-mentioned local authority, who shall transmit it to the Board with the said application.

Notice by advertisement of application having been made to the Board.

ARTICLE XI.—When the local authority have transmitted to the Board an application for the approval of the Board to the preparation or adoption of a scheme, the local authority shall forthwith give notice of such application and of the date of the resolution making the application by advertisement in some newspaper or newspapers circulating in the area of the local authority.

PROCEDURE DURING, ON, AND AFTER THE PREPARATION OR ADOPTION AND BEFORE THE APPROVAL OF THE SCHEME.

Notices of authority having been given to prepare or adopt a scheme, and of intention to prepare or adopt a scheme Persons desiring to be heard to give notice to local authority.

ARTICLE XII.—(a) When authority has been given by the Board to the preparation by a local authority of a scheme with reference to any land or to the adoption by a local authority, with or without modifications, of a scheme proposed by owners of land, the local authority shall forthwith serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land in reference to which authority to prepare or adopt a scheme has been so given, and upon the council of any borough or of any urban or rural district within which any part of that land is comprised, and also, if any main road is or may be affected by the scheme, upon the county council, a notice that such authority has been given and that a copy of the Order or instrument giving such authority may be inspected, and any necessary explanation or information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day pending the preparation or adoption of the scheme. They shall also give notice to the same effect by advertisement in some newspaper or newspapers circulating in the area of the local authority.

(b) If the land in reference to which authority to prepare or adopt a scheme has been given as aforesaid excludes any land in regard to which an application under Article IV. of these regulations was made to the Board the local authority shall serve notice of the exclusion of such land upon the owners or reputed owners, lessees or reputed lessees, and occupiers of such excluded land and upon the council of any borough or of any urban or rural district within which any part of the excluded land is comprised, and also, if any main road would or might have been affected by the inclusion of the excluded land, upon the county council.

(c) The notices to be served on owners or other persons or to be given by advertisement under paragraph (a) of this article shall also state that the local authority propose to prepare a scheme or, as the case may be, to adopt with or without modifications the scheme proposed by owners, and that any person interested or affected desiring to be heard in reference to such proposal, including any persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme, should give notice in writing to the clerk to the local authority within twenty-one days from the date of the notice.

(d) The local authority shall make a suitable provision for affording to any person interested or affected inspecting the Order or instrument of the Board giving authority to prepare or adopt a scheme any necessary explanation or information in regard thereto.

Consideration by local authority of objections, &c.

ARTICLE XIII.—In connection with the preparation or adoption of a scheme the local authority shall carefully consider all objections and representations made to them in writing by any persons or councils interested or affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme.

Preparation of scheme by local authority: Draft scheme

ARTICLE XIV.—When the local authority have fully considered and developed their proposals and have decided to prepare a scheme in regard to an area of land in respect of which they have been authorised to prepare a

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to be printed andMap No. 4 to be prepared showing details of proposals.

scheme, they shall cause to be printed a draft scheme embodying their proposals and shall cause a map or, if the case so require, maps (to be marked and known as "Map No. 4" or "Map No. 4 (A)," "Map No. 4 (B)," etc.) to be prepared on a scale of not less than 25·344 inches to the mile, showing clearly by means of boundary lines sharply defined in colour the area of the land included in the proposed scheme distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority, and also showing thereon all such particulars and details in relation to the proposed scheme as can conveniently be indicated thereon by the aid of reference letters or numbers, descriptive notes, distinguishing colours, or otherwise; and especially there shall be indicated and distinguished on the said map or maps:—

Existing main roads;
Roads repairable by the inhabitants at large;
Roads or footways over which the public have a right of way;
Roads on which tramways or light railways (a) have been constructed or (b) are authorised to be constructed;
Roads which the local authority propose shall be made as part of the scheme, indicating the widths thereof and any proposals as to the parts thereof to be appropriated or set apart for special purposes, and the connections of such roads with existing roads;
Roads or ways which it is proposed to stop up or divert;
Land already built upon;
Land not likely to be used for building purposes;
Land proposed to be allocated for use as open spaces, (a) private or (b) public;
Land to be used for any other purposes, including, *e.g.*, buildings for manufacturing purposes or buildings of a special character in reference either to the purposes to which they are to be applied or to their height or otherwise, indicating any restrictions proposed as to the number of buildings which may be erected on any portion of land or each acre in any portion of land;
Land to be acquired by the local authority for any purpose;
Lines of existing sewers or any existing drain pipes or mains for the supply of water, gas or electricity;
Proposals as to lines of sewers or of pipes or mains for supply of water, gas, or electricity.

Adoption of scheme by local authority: Scheme of owners to be printed and also memorandum of any modifications proposed and Map No. 4 to be prepared showing details of proposals.

ARTICLE XV.—When the local authority have fully considered the scheme proposed by owners in respect of an area of land in regard to which the local authority have been authorised to adopt a scheme with or without modifications and have decided to adopt the same with or without modifications, they shall cause to be printed a copy of the scheme proposed by owners, and shall prepare and cause to be printed a memorandum of all modifications which they propose should be made in such scheme and shall obtain from the owners or shall themselves provide a map or maps (to be marked and known as "Map No. 4" or "Map No. 4 (A)," "Map No. 4 (B)" etc.) on a scale of not less than 25·344 inches to the mile, showing thereon all such particulars and details as are required to be shown on the map or maps referred to in Article XIV. of these regulations.

Notices of scheme prepared or of scheme intended to be adopted by local authority: Deposit of draft scheme, &c., and of Map No. 4 for inspection.

ARTICLE XVI.—(a) At least one month before deciding upon the scheme to be submitted to the Board for approval, whether in regard to a scheme prepared by the local authority or a scheme proposed by owners and proposed to be adopted by the local authority, the local authority shall serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is or may be affected by the scheme, upon the county council, a notice that a draft scheme has been prepared by the local authority or (as the case may be) that the local authority intend to adopt a scheme proposed by owners, and that it is proposed to submit the same, with or without modification, to the Board for approval; and shall also give notice of such proposal by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least one month before deciding upon the scheme to be submitted to the Board.

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(b) The local authority shall, not later than the date on which the first of the said notices is given, deposit at a place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than twenty-one days from the date on which the latest of the said notices is given, the draft scheme and the map or maps referred to in Article XIV. of these regulations or (as the case may be) the scheme and memorandum and the map or maps referred to in Article XV. of these regulations, and the same shall be open for inspection by any persons interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any such person inspecting the said documents and maps any necessary explanation or information in regard thereto.

(c) The said notices shall describe the land proposed to be included in the scheme, and shall state the place at which the documents and maps referred to in paragraph (b) of this article are deposited and the period and times during which the same will be open for inspection by any persons interested or affected. The notices shall state that the local authority will be prepared to consider any objections or representations which may be made to them in writing during the said period, and the notice to be given by advertisement shall also state that the local authority will be prepared to consider any objections or representations made in writing by any persons affected, including any persons representing any architectural or archæological society or otherwise interested in the amenity of the proposed scheme.

Application of Article III. of regulations.

ARTICLE XVII.—Article III. of these regulations shall apply also in regard to procedure before the local authorities decide upon the scheme to be submitted to the Board for approval, whether in regard to a scheme prepared by the local authority or a scheme proposed by owners and proposed to be adopted by the local authority.

Making or adoption of scheme to be by order of local authority and Map No. 5 to be sealed in connection with the order.

ARTICLE XVIII.—When the local authority have decided upon the scheme to be submitted to the Board for their approval, whether in regard to a scheme prepared by the local authority or a scheme proposed by owners and proposed to be adopted by the local authority, they shall make an order under their seal, authenticated by the signature of their clerk or deputy clerk, making the scheme, or (as the case may be) adopting the scheme proposed by owners with such modifications as may have been decided upon by the local authority.

A map or, if the case so require, maps prepared in the manner and containing the particulars and details required by Article XIV. of these regulations, but to be marked and known as "Map No. 5" or "Map No. 5 (A)," "Map No. 5 (B)," etc., shall be sealed with the seal of the local authority in connection with the order:

Provided that if the map or maps required by this article to be prepared and sealed in connection with the order would be identical in all respects with the map or maps prepared in accordance with Article XIV. or (as the case may be) Article XV. of these regulations, the last-mentioned map or maps may, if the local authority think fit, be used for the purposes of this article, but if so used they shall also be marked as indicated in this article as well as in the manner required by Article XIV. or Article XV.

Application to the Board to approve scheme to be by resolution.

ARTICLE XIX.—An application to the Board to approve the scheme as made or adopted by the local authority by an order in pursuance of Article XVIII. of these regulations shall be made by a resolution of the local authority; and a copy of the resolution, certified by the clerk to the local authority, shall be transmitted without delay to the Board by the clerk, with a covering letter, and accompanied by a statement as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

Documents, &c., to accompany application for approval of a scheme: Map No. 6 and Map No. 7 to be prepared.

ARTICLE XX.—When the local authority transmit to the Board the resolution of the local authority requesting the approval of the Board to the scheme as made or adopted by the local authority, they shall transmit to the Board :—

(a) The statutory declarations and exhibits required by Article XXXI. of these regulations in proof of compliance with the requirements of Articles XII. and XVI.

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(b) A sealed copy and three other copies of the order of the local authority containing the scheme as made or adopted by them, and a certified copy of every map referred to in the order.

(c) A map on the scale of 6 inches to the mile to be marked and known as "Map No. 6," showing, by distinguishing colours or boundary lines in colour, the district of the local authority and the land included in the scheme:

Provided that, if the scheme is made or adopted by the council of a rural district, it shall not be obligatory that the map shall extend to the whole of the rural district but it shall extend to the contributory place or places therein in which any part of the land included in the scheme is comprised:

Provided also that, if in any case the land included in a scheme is wholly outside the district of the local authority, the map shall show all the area intervening between that land and the district of the local authority.

There shall also be shown on the map by some distinctive colours and any necessary reference notes all recreation grounds or public open spaces and public elementary schools in the area required to be shown on the map, and also the buildings which have been erected in that area up to the time when the map is sent to the Board, distinguishing so far as regards the land included in the scheme the buildings begun to be erected after the application was made to the Board for their approval to prepare or adopt the scheme.

(d) A map on a scale of not less than 25·344 inches to the mile, or a plan drawn to some larger scale (to be marked and known as "Map No. 7") showing the area of the land included in the scheme so divided as to indicate as nearly as may be the portions of such land belonging to different owners. The map or plan shall show as regards each portion of the land the name of the owner, or shall bear numbers having reference to a statement, to be annexed to the map or plan, showing the names of the owners.

(e) A copy of all objections made in writing in reference to the scheme so far as the objections have not been withdrawn or removed in the scheme as finally prepared or adopted by the local authority.

Information to be furnished to the Board in connection with an application for approval of a scheme.

ARTICLE XXI.—(a) The local authority shall furnish the Board with a statement or statements giving in regard to the scheme prepared or adopted by the local authority the particulars and information indicated in Articles VIII. and IX. of these regulations so far as such particulars and information are not contained in the scheme.

The said particulars and information shall be given in regard to every scheme whether prepared by the local authority or adopted by them:

Provided that where the particulars and information furnished to the Board in accordance with Article VIII. or Article IX. or any division of either of those articles represent fully and accurately the particulars and information required by this article in regard to the scheme as prepared or adopted by the local authority it shall be sufficient if a reference be made to the particulars and information previously furnished under Article VIII. or Article IX. or any division thereof.

(b) The local authority shall also furnish the Board with a statement or statements giving the particulars and information indicated below so far as they are not contained in the scheme:—

(i.) Information to show whether the scheme admits of satisfactory provision being made in regard to the supply of water, gas, or electricity within the area included in the scheme.

(ii.) Information in regard to any tramways or light railways constructed or authorised to be constructed in the area included in the scheme or in the immediate neighbourhood thereof.

(iii.) In regard to any lands proposed to be acquired by (a) the local authority submitting the scheme or (b) any other local authority, any information available as to the probability of the lands being acquired by agreement.

(iv.) Particulars in regard to any land included in the scheme which belongs to (a) the local authority submitting the scheme or (b) any other local authority; the purposes for which and the authority under which such land was acquired or is held; and also information as to any proposal in regard to its use for any other purposes under the scheme.

(v.) If the local authority are of opinion that any property will be

injuriously affected by the making of the scheme, within the meaning of the Act of 1909, information, so far as it is practicable to give the same, in regard to such property and as to the extent to which the local authority consider that it may be injuriously affected.

(vi.) Detailed particulars of any works which are to be executed under the scheme by any person or local authority, so far as any such particulars are available.

(vii.) If the scheme contains provisions suspending any enactment contained in a public general Act, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(viii.) If the scheme contains provisions suspending any other statutory enactments, byelaws, regulations or other provisions which are in operation in the area included in the scheme, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(ix.) Particulars of any land forming part of any common, open space, or allotment, within the meaning of section 73 of the Act of 1909, which is within the area included in the scheme, and of any part of that land which under the scheme is authorised to be acquired or appropriated to any other purpose, and particulars in regard to any land proposed to be given in exchange for the land so to be acquired or appropriated ;

(x.) Particulars of any land included in the scheme which is situate within the distance prescribed by regulations made by the Board under section 74 of the Act of 1909 from any of the royal palaces or parks.

Estimate and particulars as to cost of scheme: Information as to area, population, rates, debt local Acts, orders, byelaws, &c.

ARTICLE XXII.—(a) In connection with an application to the Board for their approval of the scheme prepared or adopted by the local authority, information shall be furnished in regard to the estimated cost of carrying out the scheme, so far as the cost is to be borne by (1) the local authority making the application and (2) any other local authority. Separate particulars shall be given under the following heads :—

EXPENDITURE.
- Purchase of land for open spaces.
- Purchase of land for other purposes, specifying them.
- Purchase of buildings.
- Demolition or alteration of buildings.
- Compensation in respect of property injuriously affected by the scheme.
- Making or alteration of roads or ways.
- Sewerage or drainage.
- Cost of preparing the scheme.
- Other purposes, specifying them.

RECEIPTS.
- In respect of property increased in value.
- From other sources, specifying them.

(b) If the statement or statements of particulars furnished under Article X. (b) or (c) of these regulations has or have owing to lapse of time or other circumstances become inaccurate in any material respect, an amended statement or amended statements of such particulars shall be supplied.

(c) There shall also be supplied a list and a copy of all local Acts, Provisional Orders, byelaws, or regulations in force in the area of any local authority any part of whose district is included in the scheme ; and in the case of any part of a district other than that of the local authority making the application to the Board being so included, such list and copy shall be supplied by the local authority of that district to the local authority making the application, who shall transmit them to the Board.

Notice by advertisement of submission of scheme to the Board: Objections, &c., may be made to the Board.

ARTICLE XXIII.—When the local authority have submitted to the Board for their approval the scheme prepared or adopted by the local authority they shall forthwith give notice of such submission by advertisement in some newspaper or newspapers circulating in the area of the local authority. The notice shall also state that a copy of the scheme submitted to the Board may be inspected by persons affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the scheme at a place to be specified in the notice, without payment of any fee, at all reasonable hours (specifying the same) on any week-day within a period of

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one month from the date of the notice, and that any objections and representations by any such persons should be made in writing and addressed to the Board, at their office, within the said period. A copy of the newspaper or newspapers containing such advertisement shall be forwarded to the Board by the clerk to the local authority.

Notices of modifications or conditions proposed by the Board: Objections, &c., may be made to the Board.

ARTICLE XXIV.—(a) If the Board propose to make any modifications in, or to attach any conditions to, the scheme submitted for their approval and transmit to the local authority a draft Order for approving the scheme with such modifications and conditions, the local authority shall within fourteen days after the receipt of the draft Order serve a copy of the draft Order upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is affected, upon the county council, together with a notice that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Board at their office within a period of one month from the date of the serving of such draft Order and notice.

(b) The local authority shall also within fourteen days after the receipt of the draft Order give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board have caused a draft Order to be prepared for approving the scheme subject to modifications or conditions, that a copy of the draft Order may be inspected and any information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day during the period of one month from the date of the notice, and that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Board at their office within a period of one month from the date of the notice.

(c) The local authority shall furnish the Board within a period of one month from the receipt of the draft Order for approving the scheme with modifications or subject to conditions any objections or representations which they may desire to make in regard to the proposed modifications and conditions, and shall also within the same period transmit to the Board the statutory declaration and exhibits required by Article XXXI. of these regulations in proof of compliance with the requirements of this article.

Notice by advertisement of intention of the Board to approve scheme and to publish notice of such intention in London Gazette.

ARTICLE XXV.—(a) When the Board have decided to approve the scheme submitted for their approval, with or without modifications, and notify the local authority of the decision and transmit to the local authority a draft Order for approving the scheme, the local authority shall within fourteen days after the receipt of such notification give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board intend to approve the scheme and propose, after the receipt by the Board of a copy of the newspaper or newspapers containing the advertisement, to publish forthwith in the London Gazette, in accordance with subsection (4) of section 54 of the Act of 1909, a notice of such their intention, and that any person or authority interested and deciding to object to the scheme being approved should make his or their objection in the manner prescribed by Article XXVI. of these regulations within twenty-one days from the date of such publication in the London Gazette.

(b) A copy of the newspaper or newspapers containing the advertisement shall be forwarded to the Board by the clerk to the local authority immediately on the publication thereof.

(c) The local authority shall deposit at a place convenient for the purposes of inspection and shall keep deposited thereat the draft Order forwarded to them under this article, for the full period of twenty-one days from the date of the said publication in the London Gazette, and the draft Order shall be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period.

Prescribing manner of objections to approval of

ARTICLE XXVI.—When the notice of the intention of the Board to approve a scheme has been published in pursuance of subsection (4) of section 54 of the Act of 1909, any person or authority interested and deciding to object to the

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scheme being approved shall make his or their objection in the following manner that is to say :—

The objection shall be made to and be brought before the Board by means of a letter, or other representation in writing, which shall be addressed and posted, or shall be otherwise given, sent, or delivered to the Board at their office. The letter or representation shall indicate clearly the scheme to which the objection is taken, and shall state fully in what respects the person or authority objecting claims or claim to be interested in the scheme and the grounds on which the objection is made.

scheme under and for the purposes of section 54 (4) of the Act of 1909.

PROCEDURE AFTER THE APPROVAL OF THE SCHEME.

Notices of approval of scheme by the Board.

ARTICLE XXVII.—(a) The local authority, on receipt of a copy of the Order of the Board approving a scheme, shall without delay first publish notice of the approval of the scheme by advertisement in some newspaper circulating in the area of the local authority. The notice shall state that the scheme has been approved, with or without modifications or conditions as the case may be, and that the Order of the Board giving the approval and a copy of any map or plan referred to in the Order or scheme may be inspected and any necessary explanation or information in regard thereto may be obtained without payment of any fee at a place which shall be specified in the notice at all reasonable hours (specifying the same) on any week-day during the period of three months after the date of the Order. They shall also, not earlier than the second day after the first publication in a newspaper as aforesaid, serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is or may be affected by the scheme, upon the county council, a copy of the Order approving the scheme and a notice that a copy of any map or plan referred to in the Order or scheme may be inspected, and any necessary explanation or information in regard thereto may be obtained as above mentioned.

(b) The local authority shall make suitable provision for affording any person inspecting the Order or scheme or any map or plan referred to therein within the said period any necessary explanation or information in regard thereto.

(c) The local authority shall within fourteen days after the receipt of the said Order transmit to the Board the statutory declaration and exhibits required by Article XXXI. of these regulations in proof of compliance with the requirements of paragraph (a) of this article.

GENERAL.

Notices, &c., to Board of Agriculture and Fisheries and to Commissioners of Works in certain cases.

ARTICLE XXVIII.—Wherever in these regulations any notice or Order or scheme or draft Order or scheme is required to be served by the local authority upon any owner of land, the local authority shall send a like notice or Order or scheme or draft Order or scheme to the Board of Agriculture and Fisheries at their office if in the scheme or proposed scheme there is any provision for the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment within the meaning of section 73 of the Act of 1909, and to the Commissioners of Works if any land included in the scheme or proposed scheme is situate within the distance prescribed by regulations made by the Board under section 74 of the Act of 1909 from any of the royal palaces or parks.

Notices, &c., to Board of Trade and to Light Railway Commissioners in certain cases.

ARTICLE XXIX.—Where in a scheme proposed to be prepared or adopted by a local authority any land is proposed to be included on which tramways or light railways are constructed or are authorised to be constructed, the local authority shall, when they give the notices required to be given under Article I. of these regulations, also give notice to the Board of Trade and, as regards light railways, to the Light Railway Commissioners, of the intention of the local authority to apply for authority to prepare or (as the case may be) to adopt a scheme in regard to the said land, and shall from time to time thereafter furnish all such information as the Board of Trade or the Light Railway

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Service of notices.

ARTICLE XXX.—A notice required to be served in pursuance of these regulations shall be served :—

(a) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent ; or

(b) by leaving the same at the usual or last known place of abode of such person as aforesaid ; or

(c) by post addressed to the usual or last known place of abode of such person ; or

(d) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office :

Provided that if the owner of any land is not known to and after diligent inquiry cannot be found by the local authority then the notice may be served by leaving it, addressed to the owner, with some occupier of the land, or, if there be not an occupier, then by causing it to be put up on some conspicuous part of the land :

Provided also that a notice required to be given to an occupier may be addressed by the description of the "occupier" of the land or premises (describing it or them) in respect of which the notice is given, without further name or description.

Proofs of compliance with certain regulations to be furnished by statutory declarations.

ARTICLE XXXI.—Proofs of compliance with the requirements of Articles I., XII., XVI., XXIV., and XXVII. of these regulations as extended by Articles XXVIII. and XXIX. shall to the extent herein mentioned be furnished to the Board by statutory declarations (*k*) made by the clerk to the local authority or other person competent to make the same. The declarations shall in each case specify the manner in which the notices required by those articles to be served upon owners, lessees, and occupiers, and upon any other local authority or council, were served, and the names of the persons so served, and shall also show that the other requirements of those articles as to notices required to be given and as to the deposit of maps or plans or any documents required to be deposited have been duly complied with. There shall also be annexed to the declarations as exhibits :—

In regard to Article I.,—

(1) a copy of the form of notice served, (2) a copy of the map deposited for inspection, and (3) a copy of each newspaper containing the advertisement.

In regard to Article XII.,—

(1) copies of the forms of notices served, and (2) a copy of each newspaper containing the advertisement.

In regard to Article XVI.,—

(1) a copy of the form of notice served, (2) a copy of each newspaper containing the advertisement, (3) a statement showing the several parcels of land in respect of which notice was served upon each owner, lessee and occupier, (4) a copy of the draft scheme prepared by the local authority and deposited for inspection, or (4A) a copy of the scheme proposed by owners and deposited for inspection, together with a copy of any memorandum prepared by the local authority of modifications in such scheme and deposited with the scheme for inspection, and (5) copies of the maps deposited for inspection.

(*k*) The Local Government Board have been in communication with the Board of Inland Revenue in regard to the question of the exemption from Stamp Duty of Statutory Declarations required to be made in pursuance of Article XXXI. of the Town Planning Procedure Regulations (England and Wales) 1910. The Board are informed that the Board of Inland Revenue would regard such regulations as "required by law" within the meaning of those words in exemption (2) sub-tit. Affidavit and Statutory Declaration in the First Schedule to the Stamp Act, 1891 (amended by s. 6 of the Finance Act, 1907), and as therefore not liable to Stamp Duty by virtue of that exemption (Circular of March 31st, 1913).

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In regard to Article XXIV.,—

(1) a copy of the form of notice served, and (2) a copy of each newspaper containing the advertisement.

In regard to Article XXVII.,—

(1) a copy of the Order, (2) a copy of the form of notice served, and (3) a copy of the newspaper containing the advertisement.

Provisions as to maps.

ARTICLE XXXII.—(a) The maps required in pursuance of these regulations shall be Ordnance maps wherever such maps are published in respect of the district or area in relation to which the maps are required, shall be on a scale not less than that specified in each case, shall be mounted on linen and folded in book form, and shall have a scale properly drawn thereon.

(b) Any person interested in or affected by any scheme or proposed scheme shall be entitled to a copy of or extract from any map or plan required in pursuance of these regulations, on payment of a reasonable fee to be determined by the local authority, and shall be entitled to inspect at all reasonable times any map or plan referred to in Article XXVII. of these regulations. Any fees received by the local authority shall be carried to the credit of the fund liable to be charged with the expenses of the local authority in connection with the scheme.

Local authority to furnish all information, &c., required by the Board.

ARTICLE XXXIII.—The local authority shall prepare and furnish to the Board all such maps, plans, sections, elevations and specifications, and all such particulars or information as the Board shall require to be prepared and furnished in connection with any scheme or proposed scheme at any stage of the proceedings in relation thereto.

Board may consent to departures from regulations.

ARTICLE XXXIV.—Where the Board are satisfied that there is reasonable cause for dispensing, either conditionally or unconditionally, with compliance with any requirement of these regulations, or for varying any such requirement, the Board may, by Order or otherwise as they think fit, give the necessary dispensation, or may make and give effect to the necessary variation and to any incidents or consequences of that variation; and, in the case of any such dispensation when given subject to any condition, or in the case of any such variation, the local authority or other authorities or persons, as the case may be, shall comply in all respects with the condition or variation and with any requirement of the Order or other writing or direction of the Board giving the dispensation or making the variation as if the condition, variation or requirement formed part of these regulations:

Provided that the Board shall not exercise their powers under this article in such a manner as to dispense with any provisions of these regulations which are necessary to give effect to the requirements of the Act of 1909 or as so to vary any such provisions that they would cease to give effect to those requirements.

Interpretation.

ARTICLE XXXV.—In these regulations "the Act of 1909" means the Housing, Town Planning, &c. Act, 1909.

Short title.

ARTICLE XXXVI.—These regulations may be cited as the Town Planning Procedure Regulations (England and Wales), 1910.

Given under the Seal of Office of the Local Government Board, this third day of May, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President*.

H. C. MUNRO, *Secretary*.

TOWN PLANNING, ENGLAND.

THE TOWN PLANNING PROCEDURE REGULATIONS (PREPARATION OF SCHEMES BY LOCAL AUTHORITIES), 1914. DATED FEBRUARY 11, 1914.

TO THE SEVERAL LOCAL AUTHORITIES in England and Wales for the purposes of Part II. of the Housing, Town Planning, &c., Act, 1909; And to all others whom it may concern

WHEREAS [*sections* 56 (1), 65 (1), 66 (2) *are recited*].

And whereas by the Town Planning Regulations Procedure (England and Wales), 1910 (hereinafter referred to as "the Regulations of 1910"), we made regulations in pursuance of section 56 of the Act of 1909 for regulating generally

Appendix II. the procedure to be adopted with respect to the preparation and adoption of town planning schemes by local authorities ;

And whereas it is expedient that the Regulations of 1910 should be revoked in part, and that fresh regulations should be made, as hereinafter mentioned :

Now therefore, in pursuance of the powers given to us in that behalf, we do, by this Order, make the following regulations ; that is to say :—

PROCEDURE ANTERIOR TO AND FOR THE PURPOSE OF AN APPLICATION FOR AUTHORITY TO PREPARE A SCHEME.

Special notice to councils interested [Section 56 (2) (b) of Act of 1909.]

ARTICLE I.—The local authority shall, within seven days after they have decided to consider a proposal for authority to prepare a scheme in reference to any area of land, serve notice of their decision upon any council interested in the land.

Notices of intention to apply for authority to prepare a scheme: Deposit of Map No. 1 showing land proposed to be included in application.

ARTICLE II.—(a) At least four weeks before making an application to the Board for authority to prepare a town planning scheme, the local authority shall serve upon the prescribed persons a notice of their intention to make such application. The local authority shall also give notice of their intention to make such application by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least four weeks before making the application.

(b) The local authority shall, not later than the date on which the first of the said notices is given, deposit at the place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than three weeks from the date on which the latest of the said notices is given, a map of the land to which it is proposed that the application shall extend. The said map (to be marked and known as "Map No. 1") shall be on the scale of 25·344 inches to the mile, and shall be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any person inspecting the map any necessary explanation in regard thereto.

(c) The said notices shall define, by a verbal description or by means of a plan annexed to the notices, the land to which it is proposed that the application shall extend and shall state the place at which a map of the land (that is, Map No. 1) is deposited and the period and times during which the same will be open for inspection by any person interested. The notices shall also include a statement that, if and when application is made to the Board for authority to prepare a scheme, notice of the application will be given by advertisement in some newspaper or newspapers circulating in the area of the local authority, and that, if such authority is given, notice of the fact will also be given in like manner. The notices to the prescribed persons may also extend to the matters of which notice is to be given under Article III.

(d) The local authority shall furnish to the council of any borough or of any urban or rural district within which any part of the said land is comprised a map on a scale of six inches to the mile, certified to show accurately the land to which the application for authority to prepare a scheme extends ; and if the council or any such borough or district so require, the local authority shall also furnish to such council a certified copy of so much of the Map No. 1 as extends to land in such borough or district.

(e) The local authority shall forthwith inform the Board of any notice issued under this article.

Consideration by local authority of objections, &c. Conferences.

ARTICLE III.—(a) The local authority before making an application to the Board for authority to prepare a scheme shall consider any objections or representations made to them in writing in reference to the proposed applications for such authority, whether by the prescribed persons or by any other persons or bodies interested in the land to which it is proposed that the application shall extend or in any neighbouring land which might be affected by the making of a scheme for the first-mentioned land ; and shall endeavour, by conferences between the local authority or their officers and such persons, to secure co-operation in regard to the proposed application.

(b) The local authority shall either :—

(1) Arrange for a meeting being held at which all such persons as afore-

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said shall be entitled to attend or be represented, for the purpose of considering the proposed application. Notice of the time and place fixed for such meeting shall be served by the local authority upon the prescribed persons and such other persons as aforesaid, if any, as in the opinion of the local authority might reasonably be interested, not less than seven days before the time fixed for the meeting. The mayor (if the local authority are the town council of a borough) or the chairman of the council (if the local authority are the London County Council or an urban or rural district council) shall be the president of the said meeting, or, in the event of the mayor or chairman being unable or unwilling to act, any person appointed for the purpose by the local authority shall be the president, or, in default of such appointment, the meeting shall choose some person present at the meeting to be president thereof. On opening the meeting the president, or a member or officer of the local authority shall give such explanation of the proposed application as he thinks expedient;

or

(2) Serve a notice upon all such persons as aforesaid stating that if the person on whom the notice is served desires to confer with the local authority or their officers in regard to the proposed application for authority to prepare a scheme, the local authority will on being so informed be prepared to arrange for such a conference at some time within a period to be specified in the notice.

Application to the Board to be by resolution: Map No. 2 to be prepared in connection with resolution.

ARTICLE IV.—(a) An application to the Board by a local authority for authority to prepare a scheme shall be made by a resolution of the local authority.

(b) The resolution shall define, by reference to a map prepared on a scale of not less than 25·344 inches to the mile (to be marked and known as "Map No. 2"), the land in reference to which it is desired to prepare the scheme, and shall state whether the land is entirely within the area of the local authority or wholly or partly within a neighbouring area. The said map shall show clearly by means of boundary lines defined in colour the area of the land to which the application extends, distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority. If the area of the land includes any piece of land already built upon or any piece of land not likely to be used for building purposes, any such lands shall be indicated on the map by distinctive colours and any necessary reference notes, and there shall also be shown on the map in like manner the positions of any buildings which have been erected on the land or of any buildings which are in course of erection.

(c) A copy of the resolution certified by the clerk of the local authority shall be transmitted without delay to the Board by the clerk, together with a statement as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

(d) The Map No. 1 prepared and deposited under Article II. may if the local authority think fit, be used for the purposes of Map No. 2: Provided that, if it is so used,—

(1) It shall be marked "Map No. 1 and Map No. 2";

(2) It shall not be altered in such a manner that it would cease to show the precise area originally shown thereon under Article II., and if the area to which the application for authority to prepare a scheme extends does not include the whole of the area so shown on Map No. 1 the part excluded from the application shall be indicated on the map;

(3) A statement shall be made and signed on the face of the map showing precisely what part or what features of it constitute the original Map No. 1;

(4) The sending to the Board of a copy of the combined Map No. 1 and Map No. 2 shall satisfy the requirements of these regulations as to sending a copy of Map No. 1 and a copy of Map No. 2.

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Documents, &c., to be furnished with application.

ARTICLE V.—In connection with the application for authority to prepare a scheme the local authority shall furnish the Board with the documents, statements, and other particulars and information hereinafter indicated :—

(a) The certificate and exhibits required by Article XXIII. in proof of compliance with the requirements of Articles II. and III.

(b) A copy of Map No. 2 duly certified by the clerk or some other officer of the local authority.

(c) A copy of all objections made in writing in reference to the proposals of the local authority so far as the objections have not been withdrawn or removed.

(d) Information as to the acreage and general character of the land to which the application extends, the extent to which the land is in course of development, the extent to which the land is likely to be used for building purposes, and, as regards the last-mentioned land, the grounds for considering that the land is likely to be so used.

(e) The reasons on which the local authority rely in support of their application.

(f) If the application extends to land already built upon or land not likely to be used for building purposes, the reasons which in the opinion of the local authority, render it necessary or desirable to include such lands in the proposed scheme ; particulars of the buildings on the lands ; such information as the local authority may be in a position to give in regard to the extent to which it would be necessary to provide for the demolition or alteration of the buildings for the purpose of carrying the proposed scheme into effect ; and, as regards any land not likely to be used for building purposes, the grounds on which it is considered that such land would not be so used.

(g) Information as to the need for improved means of communication by road in or through the area of the land to which the application extends whether by the widening or improvement of existing roads or the construction of new roads, and as to any proposals for the stopping up or diversion of existing roads or for the allocation of lands for open spaces or for other special purposes.

(h) Information as to the arrangements in operation in the area of the local authority in regard to sewerage, drainage and sewage disposal, water supply and lighting, and the like information in regard to the area of any other local authority in which any part of the land to which the application extends is comprised. If any company, whether statutory or otherwise, is supplying or has power to supply water, gas, or electricity in the area of that land, it should be so stated and particulars given in regard thereto.

(i) If the land to which the application extends is not wholly within the area of the local authority making the application, information shall be supplied as to the proposals in regard to the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works which under such scheme, or under Part II. of the Act of 1909, may have to be executed by a local authority.

(j) Information as to any monuments or ancient monuments, within the meaning of the Ancient Monuments Consolidation and Amendment Act, 1913, situate within the area included in the scheme, and as to the manner in which they would be affected.

(k) A statement that the land to which the application extends does not include any Crown lands.

Estimate as to cost of scheme: Information as to area, population, rates, debt, &c.

ARTICLE VI.—(a) In connection with an application for authority to prepare a scheme the local authority shall state as nearly as may be practicable the estimated cost of preparing the scheme and obtaining the approval of the Board thereto ; and if the local authority contemplate that the execution of the scheme when made and approved will involve capital expenditure chargeable on the rates they shall also state the amount of such expenditure so far as they may be in a position to form an estimate thereof. The amount of such cost and expenditure expected to be borne by (1) the local authority making the application, and (2) any other local authority shall be indicated.

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(b) Subject to the proviso hereinafter contained, the local authority shall also furnish a statement showing the following particulars with respect to the district of the local authority, that is to say:—

(i.) the acreage;
(ii.) the population according to the last census;
(iii.) the rateable value for the purposes of the poor rate;
(iv.) the amount in the pound of every rate levied during the three last preceding financial years;
(v.) the amount of the balances of the outstanding loans contracted by the local authority and the sum included in such amount in respect of loans for sanitary purposes; and
(vi.) the amount of the loans sanctioned but not raised though proposed to be raised, and the sum included in such amount in respect of loans for sanitary purposes:

Provided that if it is proposed that the cost of the scheme to be borne by the local authority shall be charged upon any contributory place or places in their district the particulars required under heads (i.), (ii.), (iii.), and (iv.) hereof shall be given with respect to such place or places only.

(c) If any part of the cost of the scheme is expected to be borne by a local authority other than the local authority making the application, the first-mentioned local authority shall make a statement showing in regard to their district the several particulars indicated in paragraph (b) of this article, and shall supply the same to the last-mentioned local authority, who shall transmit it to the Board in connection with the said application.

Notice by advertisement of application having been made to the Board.

ARTICLE VII.—When the local authority have transmitted to the Board the resolution applying for authority to prepare a scheme, the local authority shall forthwith give notice of the fact and of the date of the resolution making the application by advertisement in some newspaper or newspapers circulating in the area of the local authority. A copy of the newspaper containing the advertisement shall forthwith be forwarded to the Board.

PROCEDURE DURING, ON, AND AFTER THE PREPARATION AND BEFORE THE APPROVAL OF THE SCHEME.

Notice by advertisement of authority having been given to prepare a scheme, and of intention to prepare a scheme: Persons desiring to be heard to give notice to local authority.

ARTICLE VIII.—(a) When authority has been given by the Board to the preparation by a local authority of a scheme with reference to any land, the local authority shall forthwith give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that such authority has been given and that a copy of the Order or instrument giving such authority may be inspected, and any necessary explanation or information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day pending the preparation of the scheme.

(b) If the land in reference to which authority to prepare a scheme has been given as aforesaid excludes any land in regard to which an application under Article IV. was made to the Board, the local authority shall serve notice of the exclusion of such land upon such of the prescribed persons as are interested in the land so excluded.

(c) The notice to be given under paragraph (a) of this article shall also state that the local authority propose to prepare a scheme, and that any person interested or affected desiring to be heard in reference to such proposal, including any persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme, should give notice in writing to the clerk to the local authority within twenty-one days from the date of the notice.

(d) The local authority shall make suitable provision for affording to any person interested or affected inspecting the Order or instrument of the Board giving authority to prepare a scheme any necessary explanation or information in regard thereto.

Consideration by local authority of objections, &c.

ARTICLE IX.—In connection with the preparation of a scheme the local authority shall carefully consider all objections and representations made to them in writing by any persons interested or affected, including persons

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representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme.

Preparation of scheme by local authority: Draft scheme to be printed and Map No. 3 to be prepared showing details of proposals.

ARTICLE X.—When the local authority have fully considered and developed their proposals they shall cause to be printed a draft scheme embodying these proposals, and shall cause a map or, if the case so require, maps (to be marked and known as "Map No. 3" or "Map No. 3 (A)," "Map No. 3 (B)," &c.) to be prepared on a scale of not less than 25·344 inches to the mile, showing clearly by means of boundary lines defined in colour the area of the land included in the proposed scheme distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority, and also showing thereon all such particulars and details in relation to the proposed scheme as can conveniently be indicated thereon by the aid of reference letters or numbers, descriptive notes, distinguishing colours, or otherwise; and especially there shall be indicated and distinguished on the said map or maps:—

- Existing main roads;
- Roads repairable by the inhabitants at large;
- Roads or footways over which the public have a right of way;
- Roads on which tramways or light railways (a) have been constructed or (b) are authorised to be constructed;
- Roads which the local authority propose shall be made as part of the scheme, indicating the widths thereof and any proposals as to the parts thereof to be appropriated or set apart for special purposes, and the connections of such roads with existing roads;
- Roads or ways which it is proposed to stop up or divert;
- Land already built upon;
- Land not likely to be used for building purposes;
- Land proposed to be allocated for use as open spaces (a) private or (b) public;
- Land to be used for any other purposes, including, *e.g.*, buildings for manufacturing purposes or buildings of a special character in reference either to the purposes to which they are to be applied or to their height or otherwise indicating any restrictions proposed as to the number of buildings which may be erected on any portion of land or each acre in any portion of land;

Land to be acquired by the local authority for any purpose.

Notices of scheme prepared by local authority: Deposit of draft scheme, &c., and of Map No. 3 for inspection.

ARTICLE XI.—(a) When the local authority have prepared the draft scheme they shall, at least one month before deciding upon the scheme to be submitted to the Board for approval, serve upon the prescribed persons a notice that a draft scheme has been prepared by the local authority and that it is proposed to submit the same, with any modifications that may be found desirable, to the Board for approval; and shall also give notice of such proposal by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least one month before deciding upon the scheme to be submitted to the Board.

(b) The local authority shall, not later than the date on which the first of the said notices is given, deposit at a place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than twenty-one days from the date on which the latest of the said notices is given, the draft scheme and the map or maps referred to in Article X., and the same shall be open for inspection by any persons interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period The local authority shall also make suitable provisions for affording to any such person inspecting the said draft scheme and map or maps any necessary explanation or information in regard thereto.

(c) The said notices shall define the land included in the proposed scheme, and shall state the place at which the draft scheme and map or maps referred to in paragraph (b) of this article are deposited and the period and times during which the same will be open for inspection by any person interested or affected. The notices shall state that the local authority will be prepared to consider any objections or representations which may be made to them in writing during the said period, and the notice to be given by advertisement shall also state that the local authority will be prepared to consider any objec-

tions or representations made in writing by any persons affected, including any persons representing any architectural or archæological society or otherwise interested in the amenity of the proposed scheme. The notices to the prescribed persons may also extend to the matters of which notice is to be given under Article XII.

Application of Article III.

ARTICLE XII.—Article III. shall, with the necessary modifications, apply also in regard to procedure before the local authority decide upon the scheme to be submitted to the Board for approval:

Provided that the procedure under paragraph (b) (1) of that article shall be adopted.

Making of scheme to be by order of local authority and Map No. 4 to be sealed in connection with the Order.

ARTICLE XIII.—When the local authority have decided upon the scheme to be submitted to the Board for their approval, they shall make an order under their seal, authenticated by the signature of their clerk or deputy clerk, making the scheme.

A map, or, if the case so require, maps, prepared in the manner and containing the particulars and details required by Article X. of these regulations, but to be marked and known as "Map No. 4" or "Map No. 4 (A)," "Map No. 4 (B)," &c., shall be sealed with the seal of the local authority in connection with the order:

Provided that if (a) the map or maps required by this article to be prepared and sealed in connection with the order would be identical in all respects with the map or maps prepared in accordance with Article X., or (b) the Board consent under Article XXVI. of these regulations, the last-mentioned map or maps may, if the local authority think fit, be used for the purposes of this article, but if so used, they shall also be marked as indicated in this article as well as in the manner required by Article X.

Application to the Board to approve scheme to be by resolution.

ARTICLE XIV.—An application to the Board to approve the scheme as made by the local authority by an order in pursuance of Article XIII, shall be made by a resolution of the local authority; and a copy of the resolution, certified by the clerk to the local authority, shall be transmitted without delay to the Board by the clerk, with a statement as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

Documents, &c., to accompany application for approval of a scheme: Map No. 5 to be prepared.

ARTICLE XV.—In connection with an application for the approval of the Board to the scheme as made by the local authority, the local authority shall furnish the Board with the documents, statements, and other particulars and information hereinafter indicated:—

(a) The certificate and exhibits required by Article XXIII., in proof of compliance with the requirements of Articles VIII., XI., and XII.

(b) A sealed copy and six other copies of the order of the local authority containing the scheme as made by them, and a certified copy of every map referred to in the order.

(c) A map on a scale of not less than 25·344 inches to the mile, or a plan drawn to some larger scale (to be marked and known as "Map No. 5") showing the area of the land included in the scheme so divided as to indicate as nearly as may be the portions of such land belonging to different owners. The map or plan shall show as regards each portion of the land the name of the owner or shall bear numbers having reference to a statement, to be annexed to the map or plan showing the names of the owners.

(d) A copy of all objections made in writing in reference to the scheme as originally prepared so far as the objections have not been withdrawn or removed in the scheme as finally made by the local authority.

(e) Any particulars and information in regard to the matters mentioned in paragraphs (d) to (k) of Article V., so far as it may be necessary to supplement or vary the particulars and information previously furnished under those paragraphs.

(f) The names and addresses of the owners of each parcel of the land included in the scheme, and the approximate extent of each such parcel.

(g) Information to show whether the scheme admits of satisfactory provision

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being made in regard to the supply of water, gas, or electricity within the area included in the scheme.

(h) Information in regard to any tramways or light railways constructed or authorised to be constructed in the area included in the scheme or in the immediate neighbourhood thereof.

(i) Information as to the extent to which it may be contemplated or necessary under the scheme that land should be acquired by (1) the local authority submitting the scheme or (2) any other local authority, and as to the probability of the lands being acquired by agreement.

(j) Particulars in regard to any land included in the scheme which belongs to (1) the local authority submitting the scheme or (2) any other local authority ; the purposes for which and the authority under which such land was acquired or is held ; and also information as to any proposal in regard to its use for any other purposes under the scheme.

(k) If the local authority are of opinion that any property will be injuriously affected by the making of the scheme, within the meaning of the Act of 1909, information, so far as it is practicable to give the same, in regard to such property and as to the extent to which the local authority consider that it may be injuriously affected.

(l) Detailed particulars of any works which are to be executed under the scheme by any person or local authority, so far as any such particulars are available.

(m) If the scheme contains provisions suspending any enactment contained in a public general Act, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(n) If the scheme contains provisions suspending any other statutory enactments, byelaws, regulations, or other provisions which are in operation in the area included in the scheme, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(o) Particulars of any land forming part of any common, open space, or allotment, within the meaning of section 73 of the Act of 1909, which is within the area included in the scheme, and of any part of that land which under the scheme is authorised to be acquired or appropriated to any other purpose, and particulars in regard to any land proposed to be given in exchange for the land so to be acquired or appropriated.

(p) Particulars of any land included in the scheme which is situate within the distance prescribed by regulations made by the Board under section 74 of the Act of 1909 from any of the royal palaces or parks.

Estimate and particulars as to cost of scheme: Information as to area, population, rates, debt, local Acts, orders, byelaws, &c.

ARTICLE XVI.—(a) In connection with an application to the Board for their approval of the scheme prepared by the local authority, information shall be furnished in regard to the estimated cost of carrying out the scheme, so far as the cost is to be borne by (1) the local authority making the application and (2) any other local authority. Separate particulars shall be given under the following heads :—

Expenditure.

Purchase of land for open spaces.
Purchase of land for other purposes, specifying them.
Purchase of buildings.
Demolition or alteration of buildings.
Compensation in respect of property injuriously affected by the scheme.
Making or alteration of roads or ways.
Sewerage or drainage.
Cost of preparing the scheme.
Other purposes, specifying them.

Receipts.

In respect of property increased in value.
From other sources, specifying them.

(b) If the statement or statements of particulars furnished under Article VI. (b) or (c) has or have owing to lapse of time or other circumstances become

inaccurate in any material respect, an amended statement or amended statements of such particulars shall be supplied.

(c) There shall also be supplied a list and a copy of all local Acts, Provisional Orders, byelaws, or regulations in force in the area of any local authority any part of whose district is included in the scheme; and in the case of any part of a district other than that of the local authority making the application to the Board being so included, such list and copy shall be supplied by the local authority of that district to the local authority making the application, who shall transmit them to the Board.

Notice by advertisement of submission of scheme to the Board: Objections, &c., may be made to the Board.

ARTICLE XVII.—When the local authority have submitted to the Board for their approval the scheme prepared by the local authority they shall forthwith give notice of such submission by advertisement in some newspaper or newspapers circulating in the area of the local authority. The notice shall also state that a copy of the scheme submitted to the Board may be inspected by persons affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the scheme, at a place to be specified in the notice, without payment of any fee, at all reasonable hours (specifying the same) on any week-day within a period of one month from the date of the notice, and that any objections and representations by any such persons should be made in writing addressed to the Board, at their office, within the said period. A copy of the newspaper or newspapers containing such advertisement shall be forwarded to the Board by the clerk to the local authority.

Notices of modifications or conditions proposed by the Board: Objections, &c., may be made to the Board.

ARTICLE XVIII.—(a) If the Board propose to make any modifications in, or to attach any conditions to, the scheme submitted for their approval and transmit to the local authority a draft Order for approving the scheme with such modifications and conditions, the local authority shall within fourteen days after the receipt of the draft Order serve notice upon the prescribed persons and also give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board have caused a draft Order to be prepared for approving the scheme subject to modifications or conditions, that a copy of the draft Order may be inspected and any information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day during the period of one month from the date of the notice, and that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Board at their office within a period of one month from the date of the serving of the notice on the prescribed persons or the date of the notice by advertisement as the case may be.

(b) The local authority shall furnish the Board within a period of one month from the receipt of the draft Order with any objections or representations which they may desire to make in regard to the proposed modifications and conditions, and shall also within the same period transmit to the Board the certificate and exhibits required by Article XXIII. in proof of compliance with the requirements of this article.

Notice by advertisement of intention of the Board to approve scheme and to publish notice of such intention in London Gazette.

ARTICLE XIX.—(a) When the Board have decided to approve the scheme submitted for their approval, with or without modifications, and notify the local authority of the decision and transmit to the local authority a draft Order for approving the scheme, the local authority shall within fourteen days after the receipt of such notification give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board intend to approve the scheme and propose, after the receipt by the Board of a copy of the newspaper or newspapers containing the advertisement, to publish forthwith in the London Gazette, in accordance with sub-section (4) of section 54 of the Act of 1909, a notice of such their intention, and that any person or authority interested and deciding to object to the scheme being approved should make his or their objection in the manner prescribed by Article XX. within twenty-one days from the date of such publication in the London Gazette.

(b) A copy of the newspaper or newspapers containing the advertisement shall be forwarded to the Board by the clerk to the local authority immediately on the publication thereof.

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(c) The local authority shall deposit at a place convenient for the purposes of inspection and shall keep deposited thereat the draft Order forwarded to them under this article, for the full period of twenty-one days from the date of the said publication in the London Gazette, and the draft Order shall be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period.

Prescribing manner of objection to approval of scheme under and for the purposes of section 54 (4) of the Act of 1909.

ARTICLE XX.—When the notice of the intention of the Board to approve a scheme has been published in pursuance of sub-section (4) of section 54 of the Act of 1909, any person or authority interested and deciding to object to the scheme being approved shall make his or their objection in the following manner, that is to say :—

The objection shall be made to and be brought before the Board by means of a letter, or other representation in writing, which shall be addressed and posted, or shall be otherwise given, sent, or delivered to the Board at their office. The letter or representation shall indicate clearly the scheme to which the objection is taken, and shall state fully in what respects the person or authority objecting claims or claim to be interested in the scheme and the grounds on which the objection is made.

PROCEDURE AFTER THE APPROVAL OF THE SCHEME.

Notices of approval of scheme by the Board.

ARTICLE XXI.—(a) The local authority, on receipt of a copy of the Order of the Board approving a scheme, shall without delay first publish notice of the scheme by advertisement in some newspaper circulating in the area of the local authority. The notice shall state that the scheme has been approved, with or without modifications or conditions as the case may be, and that the Order of the Board giving the approval and a copy of any map or plan referred to in the Order or scheme may be inspected and any necessary explanation or information in regard thereto may be obtained without payment of any fee at a place which shall be specified in the notice at all reasonable hours (specifying the same) on any week-day during the period of three months after the date of the Order. They shall also, not earlier than the second day after the first publication in a newspaper as aforesaid, serve upon the prescribed persons a copy of the Order approving the scheme and a notice that a copy of any map or plan referred to in the Order or scheme may be inspected, and any necessary explanation or information in regard thereto may be obtained as above mentioned.

(b) The local authority shall make suitable provision for affording any person inspecting the Order or scheme or any map or plan referred to therein within the said period any necessary explanation or information in regard thereto.

(c) The local authority shall within fourteen days after the receipt of the said Order transmit to the Board the certificate and exhibits required by Article XXIII. in proof of compliance with the requirements of paragraph (a) of this Article.

GENERAL.

Service of notices.

ARTICLE XXII.—A notice required to be served in pursuance of these regulations shall be served :—

(a) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent ; or

(b) by leaving the same at the usual or last known place of abode of such person as aforesaid ; or

(c) by post addressed to the usual or last known place of abode of such person ; or

(d) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office ;

Provided that if the owner of any land is not known to and after reasonable inquiry cannot be found by the local authority then the notice may be served by leaving it, addressed to the owner, with some occupier of the land, or, if there be not an occupier, then by causing it to be put up on some part of

the land or in some conspicuous place or places in the immediate neighbourhood thereof: Appendix II.

Provided also that an accidental omission to serve a notice required under these regulations shall not render any proceedings thereunder invalid.

Proofs of compliance with certain regulations to be furnished.

ARTICLE XXIII.—Proofs of compliance with the requirements of Articles II., III., VIII., XI., XII., XVIII., and XXI. shall to the extent herein mentioned be furnished to the Board by certificates signed by the clerk to the local authority or other person competent to give such certificates. The certificates shall in each case specify the manner in which the notices required by those articles to be served upon any person or body were served, and the names of the persons or bodies so served, and shall also certify that the other requirements of those articles as to notices required to be given and as to the deposit of maps or plans or any documents required to be deposited have been duly complied with. There shall also be annexed to the certificates as exhibits:—

In regard to Articles II. and III.,—

(1) a copy of each form of notice served, (2) a copy of the Map No. 1 deposited for inspection, and (3) a copy of each newspaper containing the advertisement.

In regard to Article VIII.,—

(1) a copy of each newspaper containing the advertisement, and (2) a copy of the form of notice served under paragraph (b).

In regard to Articles XI. and XII.,—

(1) a copy of each form of notice served, (2) a copy of each newspaper containing the advertisement, (3) a statement showing the several parcels of land in respect of which notice was served upon each owner, lessee and occupier, (4) a copy of the draft scheme prepared by the local authority and deposited for inspection, and (5) a copy of each map deposited for inspection.

In regard to Article XVIII.,—

(1) a copy of the form of notice served, and (2) a copy of each newspaper containing the advertisement.

In regard to Article XXI.,—

(1) a copy of the Order, (2) a copy of the form of notice served, and (3) a copy of the newspaper containing the advertisement.

Provisions as to maps.

ARTICLE XXIV.—(a) The maps required in pursuance of these regulations shall be Ordnance maps wherever such maps are published in respect of the district or area in relation to which the maps are required, shall be on a scale not less than that specified in each case, shall, subject to the proviso hereto, be mounted on linen and folded in book form unless the Board approve of some other arrangement, and shall have a scale properly drawn thereon: Provided that as regards Maps Nos. 1 and 2 the copy to be sent to the Board may, if the local authority think fit, be in sections consisting of the sheets of Ordnance maps unmounted but bound together and prefaced by an index map on the scale of six inches to the mile showing in a connected form the area proposed for inclusion in a scheme.

(b) Any person interested in or affected by any scheme or proposed scheme shall be entitled to a copy of or extract from any map or plan required in pursuance of these regulations, on payment of a reasonable fee to be determined by the local authority, and shall be entitled to inspect at all reasonable times any map or plan referred to in Article XXI. Any fees received by the local authority shall be carried to the credit of the fund liable to be charged with the expenses of the local authority in connection with the scheme.

Local authority to furnish all information, &c., required by the Board.

ARTICLE XXV.—The local authority shall prepare and furnish to the Board all such maps, plans, sections, elevations and specifications, and all such particulars or information as the Board shall require to be prepared and furnished in connection with any scheme or proposed scheme at any stage of the proceedings in relation thereto.

Board may consent to departures from regulations.

ARTICLE XXVI.—Where the Board are satisfied that there is reasonable cause for dispensing, either conditionally or unconditionally, with compliance with any requirement of these regulations, or for varying any such requirement, the Board may, by Order or otherwise as they may think fit, give the necessary dispensation, or may make and give effect to the necessary variation

Appendix II. and to any incidents or consequences of that variation; and, in the case of any such dispensation when given subject to any condition, or in the case of any such variation, the local authority or other authorities or persons, as the case may be, shall comply in all respects with the condition or variation and with any requirement of the Order or other writing or direction of the Board giving the dispensation or making the variation as if the condition, variation or requirement formed part of these regulations:

Provided that the Board shall not exercise their powers under this article in such a manner as to dispense with any provisions of these regulations which are necessary to give effect to the requirements of the Act of 1909 or as so to vary any such provisions that they would cease to give effect to those requirements.

Interpretation.

ARTICLE XXVII.—In these regulations:

"The Act of 1909" means the Housing, Town Planning, &c. Act, 1909;

"The Board" means the Local Government Board;

The word "owner" or "owners" has the same meaning as in the Lands Clauses Acts;

The expression "prescribed persons" means,—

(a) the owners of the land included or proposed to be included in the scheme or proposed scheme;

(b) the council of any borough or of any urban or rural district within which any part of that land is comprised, and also, if any main road is or may be affected, the county council;

(c) the Board of Agriculture and Fisheries if in the scheme or proposed scheme there is any provision for the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment within the meaning of section 73 of the Act of 1909;

(d) the Commissioners of Works if any land included in the scheme or proposed scheme is situate within the distance prescribed by regulations made by the Board under section 74 of the Act of 1909 from any of the royal palaces or parks;

(e) the Board of Trade and, in relation to light railways, the Light Railway Commissioners (so far as regards the notice to be given under Article II.), if any land is proposed to be included in the application on which tramways or light railways are constructed or are authorised to be constructed. The notice served in any such case should be endorsed with the name or other identification of the tramway or light railway in respect of which the notice is served.

Repeal of regulations of 1910 with savings.

ARTICLE XXVIII.—(1) Subject as hereinafter provided the regulations of 1910 are hereby revoked except so far as they apply to the adoption by a local authority of any scheme proposed by any owner or owners of land:

Provided that—

(a) Such revocation shall not affect or prejudice any proceedings that have been taken or are being taken under the Regulations of 1910;

(b) Any proceeding that has been commenced under any provisions of the Regulations of 1910 may be completed in accordance with those provisions, or may be continued in accordance with the provisions of the regulations by this Order prescribed as the local authority may think fit; and

(c) Any subsequent proceedings shall be taken in accordance with the provisions of the regulations by this Order prescribed.

(2) If any doubt arises as to whether any particular proceeding shall be commenced or completed in accordance with the Regulations of 1910 or in accordance with the regulations by this Order prescribed the matter may be determined by the Local Government Board whose decision shall be final and conclusive.

Short title.

ARTICLE XXIX.—These regulations may be cited as the Town Planning Procedure Regulations (Preparation of Schemes by Local Authorities), 1914.

Given under the Seal of Office of the Local Government Board, this eleventh day of February, in the year one thousand nine hundred and fourteen.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

LOANS.

PAYMENT OUT OF BORROWED MONEY OF WAGES OF PERMANENT WORKMEN—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
4th February, 1907.

SIR,—I am directed by the Local Government Board to state that on several occasions they have had before them the question whether, when a local authority themselves carry out works by means of borrowed money, the wages of workmen permanently employed by the local authority can properly be defrayed out of the loan, if the men are engaged on the work.

The Board have reason to believe that the view which they have taken with regard to this matter has not been clearly understood in some instances, and in order to remove any misapprehension with regard to it, they direct me to enclose a copy of questions put to the President on the subject in the House of Commons last session, together with a copy of his replies.

I am, &c.,
S. B. PROVIS, *Secretary.*

The Clerk to the County Council, or
The Town Clerk, or
The Clerk to the District Council.

WEDNESDAY, 2ND MAY, 1906.

Mr. Hudson: I beg to ask the President of the Local Government Board if he has seen the report of the inquiry held by Mr. H. Percy Boulnois, M.I.C.E., Inspector of the Department, into an application made by the city council of Newcastle-on-Tyne for leave to borrow £7,665 for works of street improvements, wherein the said inspector stated that the Board would not sanction the loan if the corporation regular staff were to be employed on the work, but if special men were employed for the purpose the loan might be granted; and can he state the reason of this order if such order has been given.

Mr. John Burns: The view taken by the Local Government Board is that the wages of workmen permanently employed by a local authority should not be paid out of borrowed money, and consequently it is their practice to exclude from the amount to be borrowed for works proposed to be executed by the authority any sums which would be paid in respect of such wages. In the present instance, I understand from the inspector's report that he thinks that each of the intended works will be carried out by gangs specially employed for the purpose. If this course is adopted, there will be no objection to including their remuneration in the loan.

Mr. Hudson: Will this rule in any way prevent municipal corporations from doing their own work?

Mr. John Burns: Certainly not. It is drawn up in the interest of sound, equitable finance.

THURSDAY, 20TH DECEMBER, 1906.

Mr. Snowden: I beg to ask the President of the Local Government Board if it is the practice of the Board to decline to sanction in a loan for a permanent improvement any sum paid as wages to corporation workmen engaged on the work, while no such deduction for wages is made if the work be done by private contractors; if he is aware that at a recent inquiry at Wrexham the inspector of the Board was unable to give any reason for such a practice, and that the borough accountant said he had never been able to understand on what principle the rule was based; and whether, in view of the discouragement to direct employment by this rule, he will withdraw it.

Mr. John Burns: The view taken by the Local Government Board is that the wages of workmen permanently employed by a local authority should not be paid out of borrowed money, and consequently it is their practice to exclude from the amount to be borrowed for works to be executed by the authority any sums which would be paid in respect of such wages. I have no informa-

Appendix II. tion as to what the inspector said on the subject at the inquiry at Wrexham, but I understand that in that case the sum proposed to be borrowed did not include any sum to be paid to the regular staff of the town council. There does not appear to me to be any sufficient reason for altering the rule in this matter. My hon. friend will observe that the rule only applies where the workmen are permanently employed by the local authority, and does not prevent the authority from carrying out works themselves by means of men engaged for the purpose.

MARKETS.

CIRCULAR AS TO THE PUBLIC HEALTH ACT, 1908.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
7th September, 1908.

SIR,—I am directed by the Local Government Board to call the attention of the rural district council to the Public Health Act, 1908 (8 Edw. 7, c. 6), which has recently been passed and which has for its object to make certain sections of the Public Health Act, 1875, with respect to the provision and regulation of markets applicable in rural districts.

The Act is to be construed as one with the Act of 1875. Under section 166 of that Act urban district councils are empowered,

(1) to provide a market place and construct a market house and other conveniences for the purpose of holding markets,
(2) to provide houses and places for weighing carts,
(3) to make convenient approaches to the market,
(4) to provide all such matters and things as may be necessary for the convenient use of the market,
(5) to purchase and take on lease land, and public and private rights in markets and tolls for any of the above-mentioned purposes, and
(6) to take stallages, rents, and tolls in respect of the use by any person of the market.

No market may, however, be established in pursuance of the section so as to interfere with any rights, powers, or privileges enjoyed within the district by any person without his consent.

In the case of an urban district council other than a town council the powers above referred to can only be exercised with the consent of the owners and ratepayers of the district.

For the purpose of enabling any urban authority to establish or regulate markets, section 167 of the Act of 1875 incorporates certain provisions of the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), in so far as they relate to markets, namely :—the provisions (1) with respect to the holding of the market, and the protection thereof (sections 12 to 16 inclusive); (2) with respect to weighing goods and carts (sections 21 to 30 inclusive); and (3) with respect to the stallages, rents, and tolls (sections 31 to 41 inclusive). The same section enables an urban authority with respect to any market belonging to them to make byelaws for any of the purposes mentioned in section 42 of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets, and requires that printed copies of any byelaws so made shall be conspicuously exhibited in the market. It is necessary that the byelaws should be confirmed by the Board, and, similarly, any tolls leviable by the local authority must receive the Board's approval.

The powers thus conferred upon urban authorities are supplemented by section 168 of the Act of 1875, which enables these authorities to purchase market rights, powers, and privileges from market companies.

The new Act will enable any rural district council, with the consent of the Board, to exercise with respect to the provision or regulation of markets any powers which an urban district council may exercise with the consent of owners and ratepayers under section 166 of the Public Health Act, 1875, as above-mentioned. In the case of a rural district council, the consent of the owners and ratepayers will not be required. And sections 167 and 168 of that

Act are made applicable with respect to the exercise of those powers by a rural district council in the same manner as they apply with respect to the exercise of those powers by an urban district council.

Cases in which rural district councils require to exercise powers under the new Act may not be very numerous, but the need for such powers has occasionally been shown, and it has been thought desirable that they should be in existence. Where, for example, it is the custom to hold live stock markets on a portion of the public highway, the provision of a properly constructed and regulated market place is frequently expedient not merely on sanitary grounds, but for the well-being of the animals offered for sale, and for the convenience both of persons attending the market and of the users of the highway.

It will be observed that the powers given by the new Act can only be exercised with the consent of the Board. In any case where they may be thought to be needed the rural district council in applying for consent should furnish the Board with full particulars of the circumstances which in the opinion of the council render the application necessary and of the action which they would propose to take if consent were given.

The Board may mention that the provision of a market, with proper accessories, will be a purpose for which the council will be enabled to borrow money under the Public Health Act, 1875.

The expenses of the council in relation to the maintenance of any market which they may establish will be defrayable as general expenses unless they are determined by order of the Board to be special expenses under section 229 of the Act of 1875.

As already indicated, any byelaws made by the council with respect to any market provided by them under the provisions of section 167 of the Act of 1875, as applied by the new Act, must be submitted to, and confirmed by the Board before they can take effect, and the requirements in relation to byelaws contained in sections 182 to 185 of the Act of 1875 must be otherwise complied with as regards any byelaws so made.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary.*

The Clerk to the Rural District Council.

MARKETS AND SALES ORDER, 1910.

The Board of Agriculture and Fisheries, by virtue and in exercise of the powers vested in them under the Diseases of Animals Acts, 1894 to 1909, and of every other power enabling them in this behalf, do order, and it is hereby ordered, as follows :—

REGULATION OF MARKETS AND SALES.

1.—(1) A market or sale of animals shall not be held in or upon any market-place, highway, saleyard, or other premises, until after the expiration of fifteen days from the date on which the premises were previously so used, unless the premises, or a part thereof sufficient to accommodate the number of animals usually exposed at such market or sale, are so paved with cement, concrete, asphalt, or other hard material impervious to water, as to permit of the same being effectually cleansed by washing.

(2) This article shall not be deemed to prohibit the holding of any lawful fair on two or more consecutive days.

CLEANSING AND DISINFECTION OF MARKETS AND SALES.

2.—(1) Any market-place, highway, saleyard, or other premises, in or upon which markets or sales of animals are habitually held, shall, as soon as practicable after being used for the purposes of a market or sale, and before being again so used, be cleansed and disinfected as follows:

(i.) The premises shall be thoroughly scraped or swept and such parts thereof as permit of the same being effectually cleansed by washing

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shall be so cleansed ; and after such cleansing the premises shall be disinfected in manner prescribed by this Article.

(ii.) All pens, hurdles, and fittings used in connection with the market or sale shall, as soon as practicable after being used for such purpose, and before being again so used, be cleansed by scraping and washing, and after such cleansing shall be disinfected in manner prescribed by this Article.

(iii.) Any premises or thing required to be disinfected shall be thoroughly coated or washed with—

(a) a one per cent. (minimum) solution of chloride of lime containing not less than thirty per cent. of available chlorine ; or

(b) a five per cent. (minimum) solution of carbolic acid (containing not less than ninety-five per cent. of actual carbolic acid), followed by a thorough sprinkling with limewash ; or

(c) a disinfectant equal in disinfective efficiency to the abovementioned solution of carbolic acid, followed by a thorough sprinkling with limewash.

(iv.) The scrapings and sweepings shall forthwith be well mixed with quicklime and be effectually removed from contact with animals.

(2) The cleansing and disinfection required by this Article shall, in the case of a market-place, saleyard, or other premises in the occupation of any person, or any pens, hurdles, or fittings used in connection with a market or sale held on such premises, be carried out by that person, and in any other case be carried out by the local authority of the district.

(3) The Board may by licence modify the requirements of this article in respect of the whole or any part of a market-place, highway, saleyard, or other premises, or in respect of any pens, hurdles, or fittings used in connection with a market or sale.

LOCAL AUTHORITY TO ENFORCE ORDER.

3. The provisions of this Order, except where it is otherwise provided, shall be executed and enforced by the local authority.

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4. If a market or sale of animals is held in contravention of this Order, the person holding the same, and the owner or consignee of each animal exposed thereat, and the person exposing the same thereat, and the purchaser thereat of any animal, such last-mentioned person or such purchaser knowing the market or sale to be held in contravention as aforesaid, shall, each according to and in respect of his own acts and defaults, be deemed guilty of an offence against the Act of 1894.

INTERPRETATION.

5. In this Order, unless the context otherwise requires—

"Animals" means cattle, sheep, and goats, and all other ruminating animals, and swine :

"Local authority" means the local authority of the district for the purposes of the Act of 1894 :

"Person" includes any body of persons corporate or unincorporate :

"The Act of 1894" means the Diseases of Animals Act, 1894 :

Other terms have the same meaning as in the Act of 1894.

EXTENT.

6. This Order extends to England, Wales, and Scotland.

REVOCATION.

7.—(1) The Orders described in the schedule hereto are hereby revoked as from the commencement of this Order.

(2) Such revocation shall not affect the operation of any licence issued

under, or referring to, an Order hereby revoked, and a reference in any such licence to a provision in an Order hereby revoked shall be construed as a reference to the corresponding provision in this Order.

COMMENCEMENT.

8. This Order shall come into operation on the first day of October, nineteen hundred and eleven.

SHORT TITLE.

9. This Order may be cited as the Markets and Sales Order of 1910.

In witness whereof the Board of Agriculture and Fisheries have hereunto set their official seal this twenty-ninth day of June, nineteen hundred and ten.

T. H. ELLIOTT, *Secretary.*

SCHEDULE.

ORDERS REVOKED.

No.	Date.	Short Title.
	1903.	
6714	23 June	Markets and Sales Order of 1903.
	1904.	
6796	3 February	Markets and Sales Order of 1904.

NATIONAL INSURANCE.

NATIONAL INSURANCE: EMPLOYEES OF LOCAL AUTHORITIES.

Under the National Insurance Act, 1911, a doubt existed as to the liability to compulsory insurance of certain classes of persons employed under a local or other public authority, a question having arisen as to whether such persons were employed under a contract of service. The doubt has now been removed by section 6 of the National Insurance Act, 1913, which came into operation on the 1st October. This section brings within the scope of the compulsory provisions of the Acts—

EMPLOYMENT UNDER ANY LOCAL OR OTHER PUBLIC AUTHORITY UNLESS EXCLUDED BY SPECIAL ORDER.

An Order has now been issued and is now in operation excluding the following classes of employment under local or other public authorities :—

Employment as chaplain or other minister of religion.
Employment as a duly qualified medical practitioner.
Employment as a coroner or deputy coroner.
Employment as a public analyst.
Employment as a public vaccinator.
Employment as superintendent registrar or deputy superintendent registrar, registrar of births and deaths or deputy registrar of births and deaths, and registrar of marriages or deputy registrar of marriages.
Employment under a contract of apprenticeship without money payment.
Employment as an unpaid officer of any local or other public authority.
Employment otherwise than as an officer or servant of a local or other public authority, not being an employment specified in Part I. (a), (b) (c), or (d) of the First Schedule to the National Insurance Act, 1911.

Persons employed under any local or public authority not coming under one of the above classes are therefore liable to be insured as from the 1st October subject to the ordinary conditions of exception, *e.g.*, on account of the rate of remuneration in individual cases for an employment (otherwise than by way of manual labour) being over £160 a year, or on account of the grant of a certificate of exception to a particular authority under Part II. (b) of the First Schedule to the Act of 1911.

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In regard to part-time officers, *e.g.*, some assistant overseers and sanitary inspectors, attention is drawn to the fact that a person who proves that he is ordinarily and mainly dependent for his livelihood on the earnings derived from an occupation which is not employment within the meaning of the Acts may now claim a certificate of exemption, relieving him but not the employing authority from the obligation to pay contributions. Any application for exemption should be made to the local officer of Customs and Excise.

Where there existed a doubt whether a particular person employed under a local authority was liable to be insured prior to the 1st October, and contributions were paid pending the decision of the question, such contributions will be placed to the member's credit as if he had been properly insured as an employed contributor from the time when the contributions commenced. On the other hand a person whose position was in doubt up to the 1st October and for whom no contributions were previously paid will be insurable from that date alone.

Steps should be taken to pay contributions in all cases where persons are now insurable as from the 1st October. *A card for the fifth quarter should be stamped for the twelfth and thirteenth weeks whether or not contributions have been paid previously.* By this means entry into insurance before the date (namely, October 13th) at which a person becoming an employed contributor would ordinarily cease to be entitled to full benefits for the normal contributions, will be established.

National Health Insurance Commission (England),
Buckingham Gate, London, S.W.
October, 1913.

THE NATIONAL HEALTH INSURANCE (EMPLOYMENT UNDER LOCAL AND PUBLIC AUTHORITIES) EXCLUSION ORDER, 1913, DATED OCTOBER 11, 1913, BEING PROVISIONAL SPECIAL ORDER, MADE BY THE NATIONAL HEALTH INSURANCE JOINT COMMITTEE, ACTING JOINTLY WITH THE INSURANCE COMMISSIONERS AND THE WELSH INSURANCE COMMISSIONERS, UNDER SECTION 6 OF THE NATIONAL INSURANCE ACT, 1913 (3 AND 4 GEO. 5, C. 37), EXCLUDING CERTAIN EMPLOYMENTS UNDER LOCAL AND PUBLIC AUTHORITIES FROM PART I. OF THE FIRST SCHEDULE TO THE NATIONAL INSURANCE ACT, 1911 (1 AND 2 GEO. 5, C. 55).

Whereas by section 6 of the National Insurance Act, 1913, it is provided that employment under any local or other public authority, except such as may be excluded by Special Order, shall be employment within Part I. of the National Insurance Act, 1911 (hereinafter called "the principal Act"):

And whereas by the National Insurance (Joint Committee) Regulations, 1911 and 1913, the National Health Insurance Joint Committee (hereinafter called "the Joint Committee") is to exercise jointly with the several bodies of Commissioners constituted under the principal Act the power of making the Special Orders aforesaid:

And whereas by virtue of section 82 of the principal Act the Welsh Insurance Commissioners for the purpose of carrying Part I. of the Act into effect in Wales have the like powers and duties as are by the principal Act conferred and imposed on the Insurance Commissioners:

And whereas by the National Health Insurance (Special Orders Acceleration) Order, 1912, it is provided that in any case in which the Joint Committee, acting either alone or jointly with the several bodies of Commissioners, or with any one or more of those bodies, have published notice of their proposal to make a Special Order under the Act, they may, if they certify that for the purpose of bringing into operation Part I. of the Act, it is expedient that the Special Order should come into operation forthwith, make the Order to come into operation forthwith as a Provisional Special Order, but that such a Provisional Special Order shall only continue in force until the Special Order has been made in accordance with the provisions of section 113 of, and the Ninth Schedule to the principal Act;

And whereas by sub-section (2) of section 43 of the National Insurance Act, 1913, it is provided that that Act shall be deemed to be part of Part I. of the principal Act:

And whereas the Joint Committee, acting jointly with the Insurance Commissioners and the Welsh Insurance Commissioners, have published notice of their proposal to make a Special Order in the form of this Order:

Now therefore the Joint Committee, acting jointly with the Insurance Commissioners and the Welsh Insurance Commissioners, hereby certify that, for the purpose of bringing into operation Part I. of the Act, it is expedient that the said Special Order should come into operation forthwith, and in pursuance of the powers conferred upon them by the principal Act, and the National Insurance Act, 1913, and by the National Insurance (Joint Committee) Regulations, 1912 and 1913, hereby make the said Special Order to come into operation forthwith as a Provisional Special Order, and accordingly order as follows:—

1. Employment of the class specified in the schedule to this Order under any local or other public authority respectively, shall be deemed not to be employment within the meaning of Part I. of the principal Act.

2.—(1) This Order may be cited as the National Health Insurance (Employment under Local and Public Authorities) Exclusion Order, 1913.

(2) The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Given under the Seal of Office of the National Health Insurance Joint Committee this 11th day oı October, in the year one thousand nine hundred and thirteen.

(L.S.) R. W. HARRIS, *Clerk to the National Health Insurance Joint Committee.*

Given under the Seal of Office of the Insurance Commissioners this 11th day of October, in the year one thousand nine hundred and thirteen.

(L.S.) JOHN ANDERSON, *Secretary to the Insurance Commissioners.*

Given under the Seal of Office of the Welsh Insurance Commissioners this 11th day of October, in the year one thousand nine hundred and thirteen.

(L.S.) PERCY E. WATKINS, *A person authorised by the Welsh Insurance Commissioners to act on behalf of their Secretary.*

SCHEDULE

CLASS OF EMPLOYMENT.

Employment as chaplain or other minister of religion.
Employment as a duly qualified medical practitioner.
Employment as a coroner or a deputy coroner.
Employment as a public analyst.
Employment as a public vaccinator.
Employment as superintendent registrar or deputy superintendent registrar, registrar of births and deaths or deputy registrar of births and deaths, and registrar of marriages or deputy registrar of marriages.
Employment under a contract of apprenticeship without money payment.
Employment as an unpaid officer of any local or other public authority.
Employment otherwise than as an officer or servant of a local or other public authority, not being an employment specified in Part I. (a), (b), (c), or (d) of the First Schedule to the National Insurance Act, 1911.

OFFENSIVE TRADES.

CIRCULAR, 11TH OCTOBER, 1910.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

SIR,—I am directed by the Local Government Board to advert to the Order made by them putting in force in the district of the council section 51 of the Public Health Acts Amendment Act, 1907. In drawing the attention of the council to the terms of sub-section (1) of the section, I am to point out

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that an offensive trade which is not referred to by name in section 112 of the Public Health Act, 1875, and which would, under that Act, have required the consent of the council for its establishment may, now that section 51 of the Act of 1907 is in force, be established without such consent, unless it is specifically declared to be an offensive trade by an Order confirmed by the Board under sub-section (1) of the section.

The Board suggest that the council should consider whether in respect of their district there are any trades, other than those specifically named in section 112 of the Act of 1875, which it is desirable to deal with by a Declaratory Order issued under section 51 of the Act of 1907. The Board will be prepared to entertain an application for the confirmation of such an Order, but they would, of course, have to consider any representations which might be made to them on behalf of the trades affected. They suggest that the Order should take the form of a declaration under the seal of the council such as is printed overleaf, and the Board would be glad to see the Order in draft before it is formally made. At the same time they would wish to be furnished as regards any trade included in the Order but not dealt with in the model byelaws with respect to offensive trades,* with a copy of any representation by the medical officer of health as to the carrying on of the trade in the district, or with a report from that officer giving particulars of the trade and showing the need for greater control over it.

The Board are also of opinion that where byelaws are in force with respect to offensive trades there might be some advantage if, after the Declaratory Order has been made, the council were to re-enact the byelaws under the somewhat wider powers of section 51 (2) of the Act of 1907. Copies of the model byelaws can be obtained on application to the Board, together with a memorandum containing instructions for submitting byelaws to the Board. If the council decide to remake the byelaws the draft could be submitted for consideration without waiting for the Declaratory Order to take effect.

I am, Sir, your obedient servant,

H. C. MONRO, *Secretary.*

The Town Clerk, or
The Clerk to the Urban or Rural District Council.

BOROUGH *or* URBAN *or* RURAL DISTRICT OF .

We, the † in pursuance of the powers conferred on us by section 112 of the Public Health Act, 1875, as amended by section 51 of the Public Health Acts Amendment Act, 1907, which latter section was by an Order of the Local Government Board made on the day of , one thousand nine hundred and , declared to be in force in the said [borough *or* district] on and after the day of , one thousand nine hundred and , do by this Order DECLARE each of the following trades, namely the trades of ‡ within our said [borough *or* district] to be an offensive trade.

GIVEN under the seal of the this day of 191 .

(L.S.)

Clerk.

* The model byelaws issued by the Board relate to the following trades:—blood-boiler, blood-drier, bone-boiler, fellmonger, tanner, leather-dresser, soap-boiler, tallow-melter, fat-melter or fat-extractor, tripe-boiler, glue-maker, size-maker and gut-scraper.

† *Insert* "Mayor, aldermen, and burgesses of the county borough of in the county of , acting by the council being the urban sanitary authority for the county borough of "; *or,* "Mayor, aldermen and burgesses of the borough of in the county of , acting by the council being the urban district council for the borough of "; *or* "Urban district council of , in the county of "; *or,* "Rural district council of in the county of ," *as the case may be.*

‡ *Here insert such particulars as shall clearly indicate that the declaration applies only to a business that is carried on as a specific trade. The description of trade should follow the phraseology of section* 112 *of the Public Health Act,* 1875.

OFFICERS.

APPOINTMENT OF MEMBERS AND EX-MEMBERS TO PAID OFFICES—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
5th May, 1911.

SIR,—I am directed by the Local Government Board to state that they have had under consideration the question of the appointment to paid offices under town councils, and urban and rural district councils, of persons who are or have been members of those councils.

Representations on this subject have been addressed to the Board from time to time, and they have been reminded of the rule made by the Registrar-General with regard to the office of registrar. The Royal Commission on the Poor Laws and Relief of Distress referred to that rule with approval, and have recommended that "a local authority should not be allowed to appoint an ex-member as a paid officer unless he or she has ceased to be a member of the local authority for a period of, say, twelve months before appointment."

The Board are in agreement with this view, and they feel assured that councils generally recognise the impropriety of appointing to paid offices persons who are or have been recently members of their own body.

The Board, therefore, think it necessary to intimate generally that in future, unless very special grounds are shown, they will not be prepared to sanction the appointment to any office, in respect of which their sanction may be requested, of any person who is or has been within twelve months a member of the council making the appointment.

I am, Sir, your obedient servant,
H. C. MONRO, *Secretary*.

The Town Clerk, or
The Clerk to the District Council.

MEMORANDUM OF THE LOCAL GOVERNMENT BOARD IN REGARD TO APPOINTMENTS OF MEDICAL OFFICERS OF HEALTH AND INSPECTORS OF NUISANCES.

1. *Appointment of Medical Officers of Health.*

The Board fully recognise the excellent work which has been done by many medical officers of health who have also been engaged in private practice. Their experience has shown them, however, that it is desirable, wherever practicable, that the person holding the office of medical officer of health should not be so engaged. The private interests of a general practitioner are apt to conflict with the public duties to be performed by a medical officer of health, and it is unnecessary to specify instances in which such conflict may arise. Moreover, an officer whose whole time is given to public appointments is more likely than a general practitioner to possess the special qualifications in public health which the duties increasingly thrown upon medical officers of health render desirable, and he has greater opportunities of making himself familiar with the law and practice of public health. Parliament has recognised the necessity of special qualification in public health by making it incumbent on county councils and on the councils of districts with a population of over 50,000 to appoint as medical officer of health a medical man who, in addition to the ordinary qualifications, possesses a diploma in public health or sanitary science. The medical officer of health to a county council is debarred by section 68 (7) of the Housing and Town Planning, &c. Act, 1909, from engaging in private practice, and may not hold other public appointments without the Board's consent.

The councils of nearly all the county boroughs and of many other large districts have, with great benefit to the population whose public health they protect, appointed as medical officers of health men with special qualification

Appendix II. and experience in public health matters, and have made it a condition that they shall not engage in private practice.

2. Combination of Districts for the Appointment of a Medical Officer of Health.

In the case of smaller districts the advantage of obtaining the services of a man who is not engaged in private practice may frequently be secured, either by combination with neighbouring districts for the appointment of a joint medical officer of health, or by the combination of other public appointments with that of medical officer of health. The Board trust that on the occurrence of a vacancy, councils who are not so served will consider whether they can by some such means secure the services of a medical officer of health who is not in private practice.

Under section 191 of the Public Health Act, 1875, two or more councils may agree to appoint the same medical officer of health, and under section 286 of the same Act it is open to any council to represent to the Board that the combination of two or more districts for the appointment of a medical officer of health would diminish expense or otherwise be to the advantage of the districts, and the Board may make an Order giving effect to such a representation. Under these provisions several combinations have been made with advantage to the districts concerned.

The Board's experience of these combinations is that they have secured for the districts included in them a more skilled and a more unfettered supervision in public health matters than can be obtained by the smaller districts who have not entered into such combinations, and generally at no increase of cost; in fact, the contribution to a joint salary may sometimes be less than the amount which should be paid to a separate medical officer of health. This experience has led the Board to urge such combinations in other cases. They have found, however, that local authorities frequently raise two objections to combinations: the first that they would thereby lose full control over their officer, and the second that they would not be able to command his services in case of emergency as he might live at some distance from their district, or might be engaged in urgent work in another district. The first objection is not one which can in the Board's opinion be supported. Although the same person acts for several districts, he is also medical officer of health for each and is subject to the provisions in the Board's General Order prescribing the duties of medical officers of health as applied by the special order relating to the joint district. The second objection may occasionally, though exceptionally, have some weight, but it should be remembered that a private practitioner is more likely to have other urgent calls on his time than a medical officer of health who gives his whole time to his work. And the disadvantages of non-residence are, in the Board's view, outweighed by the gain of impartiality and freedom from private ties and interests.

The Board recognise that some of the combined districts which have been formed in earlier years are somewhat too extensive for the increased duties now required of a medical officer of health, and, as opportunity has occurred, the Board have favoured the splitting up of such districts into more compact areas. This policy is assisted by the adoption of the second method referred to above for securing the services of whole time medical officers of health; that of allowing them to accept other public offices.

3. Offices which may be combined with that of Medical Officer of Health.

The office of assistant school medical officer in counties or school medical officer in small autonomous education areas under the education committee may with advantage be combined with the office of medical officer of health in a county district. Both the Board and the Board of Education have pointed out the desirability of co-ordinating these two services by the appointment of the same officer in both capacities. In the majority of cases where the education authority is the council appointing the medical officer of health this has been done and the Board trust that the authorities which have not yet adopted this course will, when opportunity presents itself, follow this example. In some other cases county councils have with advantage appointed

as assistant school medical officers the medical officers of health appointed by district councils. Appendix II.

It is in the Board's opinion very desirable that the office of superintendent of the isolation hospital should, whenever practicable, be held by the medical officer of health. The medical officer of health receives notifications of all infectious diseases, and he should be in a position, on receipt of a notification, to decide whether the case should be removed to the hospital, and if in his opinion it should, to have it removed without the necessity of a consultation.

The Home Secretary appoints to the office of certifying factory surgeon, and both he and the Board favour its combination with the office of medical officer of health.

Other public offices which the medical officer of health may be allowed to hold are those of police surgeon, public vaccinator, district medical officer, and medical officer of the workhouse.

He may also be allowed, where qualified, to make analyses and bacteriological examination of water, and bacteriological examinations for the diagnosis of disease.

4. *Salary of Medical Officer of Health.*

The salary offered to a medical officer of health who devotes his whole time to public health work should, in the Board's view, be sufficient to attract men with good qualifications, and to retain their services. The medical officer of health should not be placed in a position of inferiority in this respect to other medical men in the district. Where the several offices to be held by the medical officer of health do not afford sufficient remuneration to justify an authority in requiring that the officer should give his whole time to his public work, it may still be possible to impose the condition that he shall not engage in general practice, if he be allowed to supplement his official income by acting as consultant in cases of infectious diseases, by instructing pupils in sanitary science, and by undertaking any other private work not involving the ordinary work of a general medical practitioner.

The salary to be paid to a medical officer of health who devotes only part of his time to the office and engages in private practice, will naturally depend upon the varying circumstances of each district. It is clearly desirable that the amount of salary should be fixed with a view to the increasingly onerous and important duties which a medical officer of health is called upon to perform. It is not sufficient merely that a medical man is found who is prepared to accept the salary offered, it is more important that the salary should be such that it will be worth the while of a capable man to accept it. and to give a sufficient amount of his time to the duties.

5. *Duties of Medical Officer of Health.*

The Board have not infrequently been asked to define the scope of the duties of medical officers of health in connection with the analysis of water, the visiting of cases of infectious diseases, and other matters.

With regard to the analysis of water, the Board consider that it is the duty of a medical officer of health to inform himself of the character of the water supply of his district and for this purpose to use, when necessary, such minor tests of the water as may suffice to indicate whether further and quantitative analysis or examination is required. It forms, however, no part of his duties, as prescribed by the Board's General Order, to make a quantitative analysis of water. When such an analysis is necessary, the Board are of opinion that the council should employ any competent analyst to make it and pay him a reasonable fee for doing so. If the medical officer of health possesses the necessary qualifications, and if the time required would not interfere with the efficient discharge of his duties, the Board see no reason why the council should not make a special arrangement with him to undertake this analytical work. But the officer's remuneration for such special services should not be included in his salary as medical officer of health as no part of such special remuneration would be repayable out of the county funds.

With regard to the visitation of cases of infectious diseases, the General

Appendix II. Order does not prescribe, and the Board do not consider it necessary, that a medical officer of health should visit every such case. Infectious diseases such as scarlet fever, enteric fever, and diphtheria, can be kept under control only by active supervision of all notified cases and by endeavours to discover all cases connected with them, whether carriers or sick persons, which may be able to spread infection. To this end a medical officer of health should make each notified case the starting point for systematic and thorough investigation into possible sources of infection. In conducting such investigations a medical officer of health will bear in mind that the examination of patients in their own homes can be made only with the consent of the patient or of those in charge of the patient. If a medical practitioner is in attendance, his cooperation should always be sought.

6. *Qualifications of Inspector of Nuisances.*

The Board have not prescribed any qualification for an inspector of nuisances, but they consider that local authorities should endeavour to obtain the services as inspector of nuisances of a man qualified by special training or by experience to discharge efficiently the duties of the office. The Board regard the possession of the certificate of the Royal Sanitary Institute or of some similar body as a qualification for an inspector of nuisances in the provinces.

7. *Inspector of Nuisances and other offices.*

In districts possessing a population of over 10,000, it is generally desirable that an inspector of nuisances should devote his whole time to the duties of that office.

Where the duties appertaining to the office of inspector of nuisances do not require the whole time of the officer, local authorities would be well advised to see if by the addition of other public offices to that of inspector of nuisances they can secure that the officer shall give his whole time to their service. The following offices are most conveniently combined with that of inspector of nuisances :—surveyor under the Public Health Act (except in districts where building operations are very active); inspector under the Infant Life Protection Act; inspector under the Shop Hours Acts; inspector for certain purposes of the Factory and Workshop Acts; assistant officer under the Unsound Food Regulations; superintendent of scavenging. It must be understood that the work of these offices does not form any part of the duties of an inspector of nuisances as such and must be remunerated by a special salary for which no repayment can be claimed.

It will be observed that the office of surveyor of highways is omitted from the above list of offices which may be combined with that of inspector of nuisances. The board have come to the conclusion, as a result of experience, that the combination of these offices, especially in rural districts, is often not desirable. In districts of small area, however, there is not so great objection to combination of these offices; but, before giving their sanction to such an arrangement, the Board would require to be satisfied that the officer would devote sufficient time to his work as inspector of nuisances to ensure the adequate discharge of the duties of this office.

The sanction of the Board is sometimes sought to an arrangement by which an inspector of nuisances, while acting in another capacity, *e.g.*, as surveyor of highways, is to be helped in his work as inspector of nuisances by an assistant. In a district where the work of an inspector of nuisances who gives his whole time to that office is more than one man can properly perform the appointment of an assistant inspector is desirable. But the Board consider that the inspector of nuisances should, whenever practicable, personally perform all the duties of the office prescribed in the General Order, and they do not approve of an arrangement under which some of those duties are delegated to an assistant while the inspector of nuisances holds other offices.

In the opinion of the Board the inspector of nuisances should almost invariably be the officer to act under the direction and supervision of the medical officer of health for the purposes of the Housing (Inspection of Districts) Regulations, 1910, and for this purpose the Board will be prepared to sanction a reasonable increase of the salary of the inspector of nuisances,

8. *Combination of Districts for the Appointment of an Inspector of Nuisances.* Appendix II.

In the case of small districts, both urban and rural, there is, in the Board's opinion, considerable advantage to be gained by the combination of several districts for the appointment of the same inspector of nuisances. By this means it is possible for small districts, which by themselves cannot do so, to obtain the services of a fully qualified officer who will devote his whole time to his duties.

The Board prefer this arrangement to one by which a part only of the officer's time is given to the service of the local authority, while the remainder is devoted to private work, *e.g.*, as practising architect or surveyor, or builder, or as estate and land agent. It is clearly of importance that an officer should not occupy a position in which his public duty and his private interest are likely to be brought into direct conflict.

9. *Salary of Inspector of Nuisances.*

The amount of the salary which should be paid to an inspector of nuisances will naturally vary with the circumstances of the district and of the appointment. It should be sufficient, having regard to the conditions of employment, not merely to attract a competent man but to induce him to remain in the service of the council. The frequent change of sanitary officers to which inadequacy of salary greatly conduces, is detrimental to administrative efficiency.

In large districts, particularly in rural districts, the efficient discharge of the duties of an inspector of nuisances depends to a great extent upon the facilities which the officer possesses for getting about his district, and in fixing the terms of an appointment the local authority should see that those terms do not afford any inducement to the officer to restrict the number of journeys which he undertakes in pursuance of his duties.

Local Government Board,
December, 1910.

APPOINTMENTS OF MEDICAL OFFICERS OF HEALTH, SCHOOL MEDICAL OFFICERS AND ASSISTANT MEDICAL INSPECTORS OF SCHOOL CHILDREN—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.
7th June, 1911.

SIR,—I am directed by the Local Government Board to state that they have been in consultation with the Board of Education with regard to the appointment by county councils of medical officers of health and school medical officers and their assistants.

The Board stated in their Memorandum of December, 1910 (see *ante*, p. 2469), that both they and the Board of Education had pointed out the desirability of co-ordinating the two services by the appointment of the same officer in both capacities. The Board are glad to observe that in the great majority of counties the same officer acts as county medical officer of health and school medical officer.

The Board also stated in that Memorandum that in some cases county councils had with advantage appointed as assistant medical inspectors of school children the medical officers of health appointed by district councils, and they desire to point out more fully the benefits to be derived by both authorities from such a course. By combining the two offices referred to, the services of an officer who gives his whole time to work of a public health character may be secured for a compact area consisting of the districts of two or more local authorities and the travelling expenses incurred in the execution of the duties of the two offices may be reduced to a minimum. The Board's experience leads them to the conclusion that a saving may also be effected in salaries and establishment charges by such an appointment. The education committee may expect to attract a man of greater experience

Appendix II. for the medical inspection of school children, since the conjunction of the work of medical officer of health will open up to him a wider field for his ambition.

But the chief object that the Board have in view in advocating such combined appointments is the better co-ordination of the two services, which come into touch with one another at many points. The reports they receive show them that in some cases friction arises from the separation of the offices, and in others delays which may prove detrimental to the public health. Both the medical officer of health and the school medical officer have power in certain circumstances to advise the closure of schools, and instances in which the opinions of the two officers have been in conflict have come before the Board. A medical man holding both offices and discovering in the course of his medical inspection an undetected case of infectious disease can as medical officer of health follow up the case at once and may thus be able to prevent an outbreak. If communication with another officer is necessary, the delay involved, even if there is cordial co-operation between them, may have unfortunate results.

The chief argument which the Board have heard against this combination of offices is that difficulties may arise where the two different authorities can command the time of the same officer, since they might both require his services at the same time. The Board have not found that this difficulty occurs in practice to any appreciable extent, though in many counties the medical officer of health to the district council is already engaged as assistant medical inspector of school children in the work of school inspection. On the other hand it appears to them that the arrangement might form a useful link between the county and the local authority.

In order to facilitate this combination of offices the Board now make it a practice of requesting local authorities to make the appointment of their medical officer of health to 31st July, the date to which the Board of Education approve of arrangements made for the medical inspection of school children, and they trust that county education committees, when they find it necessary to make an alteration in their arrangements for the medical inspection of school children, will consider the practicability of appointing as assistant medical inspector of school children an officer who will also be appointed as medical officer of health for a combination of districts in the county, and will give his whole time to the work of the two offices.

I am, Sir, your obedient servant,

F. J. WILLIS, *Assistant Secretary.*

To the Clerk to the County Council.

GENERAL ORDER:—MEDICAL OFFICERS OF HEALTH AND INSPECTORS OF NUISANCES: REGULATIONS. URBAN DISTRICTS AND RURAL DISTRICTS. THE SANITARY OFFICERS (OUTSIDE LONDON) ORDER, 1910.

TO THE COUNCILS OF THE SEVERAL MUNICIPAL BOROUGHS AND OTHER URBAN DISTRICTS in ENGLAND and WALES; To the Councils of the several Rural Districts in England and Wales; And to all others whom it may concern.

WHEREAS by General Orders dated respectively the 11th day of November, 1872, and the 8th, 9th, 10th, 11th, 12th and 13th days of March, 1880, we, the Local Government Board, prescribed regulations with respect to medical officers of health and inspectors of nuisances appointed by urban and rural sanitary authorities;

And whereas by section 191 of the Public Health Act, 1875, it is enacted that we shall have the same powers as we have in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority, any portion of whose salary is paid out of moneys voted by Parliament, and that we may by Order prescribe the qualification and duties of other medical officers of health appointed under the said Act;

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And whereas by two General Orders dated the 23rd day of March, 1891, we prescribed regulations with respect to every medical officer of health or inspector of nuisances appointed or re-appointed by an urban sanitary authority or by a rural sanitary authority, after the 25th day of March, 1891, one-half of whose salary was intended to be payable by a county council or by the council of a county borough under the Local Government Act, 1888, and with respect to every medical officer of health no part of whose salary was intended to be so payable; and we made provision with regard to the application of the above-cited General Orders to medical officers of health and inspectors of nuisances appointed before the said 25th day of March, 1891:

NOW THEREFORE, we, the Local Government Board, hereby order that the above-cited Orders shall be rescinded from and after the thirty-first day of December, one thousand nine hundred and ten, and that the provisions of this Order shall, unless we otherwise direct, thenceforward apply to every medical officer of health and inspector of nuisances appointed by the council (hereinafter referred to as "the council") of every county borough and county district (hereinafter referred to as "the district").

PART I.

WITH RESPECT TO the appointment, tenure of office, salary, and duties of EVERY MEDICAL OFFICER OF HEALTH OR INSPECTOR OF NUISANCES ONE HALF OF WHOSE SALARY IS INTENDED TO BE PAYABLE BY A COUNTY COUNCIL OR COUNTY COUNCILS in pursuance of section 24 of the Local Government Act, 1888, or by the council of a county borough in pursuance of the said section and sub-section (1) of section 34 of the said Act, we hereby order as follows:—

Appointment.

ARTICLE I.—Before any appointment is made under this Order a statement shall be submitted to us containing the particulars mentioned in the form set forth in the schedule to this Order, and such other particulars as may from time to time be required by us:

Provided that where any such statement has been submitted to us under any of the above-cited orders, or under this Order, no further statement under this article shall be necessary, unless the council, on any appointment, propose to alter the district or the salary, or the time which the officer is to give to his duties, or unless we require a fresh statement to be submitted.

ARTICLE II.—When our approval has been given to the proposals contained in the statement so submitted, the council shall proceed to the appointment of the officer accordingly: Provided that if the council make the appointment before submitting such a statement as herein-before mentioned, the appointment shall be valid if approved by us.

ARTICLE III.—Before any appointment is made under this Order an advertisement specifying the district for which the appointment is to be made, together with the amount of the salary proposed to be assigned, shall be inserted in some public newspaper or newspapers circulating in the district of the council at least seven days before the date on which it is proposed that the appointment shall be considered by the council: Provided that in any special case in which the council may be of opinion that such an advertisement is not necessary, the appointment may, with our consent, be made without such advertisement.

ARTICLE IV.—Every officer shall be appointed by a majority of the members present and voting on the question, at a meeting of the council consisting of more than three members, or by three members, if no more are present. The appointment shall be subject to our sanction. The appointment may be made without limit of time or for a specified term, and in cases in which the appointment is for a term the council shall specify in the resolution making the appointment, or in a subsequent resolution, the term for which the appointment is made.

ARTICLE V.—Every appointment shall, within seven days after it is made, be reported to us by the clerk to the council.

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ARTICLE VI.—Upon the occurrence of a vacancy, the council shall proceed to make a fresh appointment:

Provided that, if the council deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to our approval.

ARTICLE VII.—Whenever notice has been given to terminate an appointment the council may proceed to make a fresh appointment to take effect from such termination.

ARTICLE VIII.—If any officer be temporarily prevented by sickness or accident, or other sufficient reason, from performing his duties, the council may appoint a qualified person to act as his temporary substitute, and may pay to such person a reasonable remuneration for his services; and it shall not be necessary in any such case that the foregoing articles of this Order should be complied with, nor shall our approval be required to any such appointment, but no remuneration shall be paid in any such case for a longer period than six weeks unless our consent be obtained.

Tenure of Office.

ARTICLE IX.—Every officer appointed to hold office without limit of time shall continue to hold office until he dies, or resigns, or is removed by the council with our assent, or is removed by us, or is proved to be insane by evidence which we shall deem sufficient.

ARTICLE X.—Subject to the provisions of this Order, every officer appointed for a specified term shall, on the expiration of that term, unless the council three months prior to the expiration of the term by resolution otherwise determine, continue to hold office from year to year until he dies, or resigns, or is removed by the council with our assent, or is removed by us, or is proved to be insane by evidence which we shall deem sufficient; and no further re-appointment of the officer by the council and no further approval of his appointment on our part shall be required unless the terms of the appointment are altered:

Provided always that the council, after the expiration of the specified term, may terminate the appointment by giving to the officer three months' written notice of their intention to do so and such notice shall take effect at the same period of the year as that at which the original term expired and not otherwise. A copy of such notice shall be sent to us at the same time as the notice is sent to the officer.

ARTICLE XI.—The council may at any time, by resolution, and with our consent, appoint an officer who holds an appointment for a specified term to hold office without limit of time.

ARTICLE XII.—The council may, at their discretion, suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to us; and if we remove the suspension of the officer by the council, he shall forthwith resume the performance of his duties.

ARTICLE XIII.—Where any change in the extent of the district of any officer, or in his duties or salary, is deemed necessary by the council or by us, and he declines to acquiesce therein, the council may, with our consent, but not otherwise, and after six months' notice in writing, signed by their clerk, given to the officer, determine his office.

ARTICLE XIV.—A person shall not be appointed who does not agree to give at least one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

ARTICLE XV.—The council shall pay to every officer such salary as may be approved by us:

Provided that the council may, with our approval, pay to any officer a reasonable remuneration on account of extraordinary services, or other

unforeseen or special circumstances connected with his duties or the necessities of the district or districts for which he is appointed.

ARTICLE XVI.—The salary of every officer shall be payable up to the day on which he ceases to hold office and no longer, subject to any deduction which the council may be entitled to make in pursuance of Article XIV. of this Order; and in case he dies whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives:

Provided that an officer who is suspended, and who, without the previous removal of such suspension, resigns or is removed under Article IX. or Article X. of this Order, shall not be entitled to any salary from the date of such suspension.

ARTICLE XVII.—The salary assigned to every officer shall be an annual salary payable in four equal instalments, on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in each year; but the Council may pay to him on account at the expiration of every calendar month such proportion of his annual salary as they think fit.

ARTICLE XVIII.—All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of the Apportionment Act, 1870.

Duties of Medical Officer of Health.

ARTICLE XIX.—The following shall be the duties of the medical officer of health in respect of the district for which he is appointed; or if he is appointed for more than one district, then in respect of each district:—

(1) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.

(2) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within the district and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.

(4) He shall be prepared to advise the council on all matters affecting the health of the district, and on all sanitary points involved in the action of the council; and in cases requiring it, he shall certify, for the guidance of the council or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5) On receiving information of the outbreak of any infectious or epidemic disease of a dangerous character within the district, he shall visit without delay the spot where the outbreak has occurred, and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the persons competent to act as to the measures which appear to him to be required to prevent the extension of the disease and shall take such measures for the prevention of disease as he is legally authorised to take under any statute in force in the district or by any resolution of the council.

(6) Subject to the instructions of the council, he shall direct or superintend the work of the inspector of nuisances in the way and to the extent that the council shall approve, and on receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall, as early as practicable, take such steps as he is legally authorised to take under any statute in force in the district, or by any resolution of the council, as the circumstances of the case may justify and require.

Appendix II.

(7) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the council he shall himself inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, and any other article to which the provisions of the Public Health Acts in this behalf apply, exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man; and if he finds that such animal or article is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be dealt with by a justice according to the provisions of the statutes applicable to the case. He shall also take such action as it may be necessary for him to take by virtue of the provisions of the Public Health (Regulations as to Food) Act, 1907, and any regulations made thereunder.

(8) He shall perform all the duties imposed upon him by any bye-laws and regulations of the council, duly confirmed where confirmation is legally required, in respect of any matter affecting the public health, and touching which they are authorised to frame byelaws and regulations.

(9) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.

(10) He shall attend at the office of the council or at some other appointed place, at such times as they may direct.

(11) He shall from time to time report in writing to the council his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been able to ascertain the same.

(12) He shall keep a book or books, to be provided by the council, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of any action taken on previous reports; and shall produce such book or books, whenever required, to the council.

(13) On Monday, the ninth day of January, one thousand nine hundred and eleven, and on every Monday thereafter, he shall forward to us by post, at such an hour as in the ordinary course of post will ensure its delivery to us on the following Tuesday morning a return, in such form as we from time to time require, as to the number of cases of infectious disease notified to him during the week ended on the preceding Saturday night. He shall also forward at the same time a duplicate of the return to the medical officer or officers of health of the county or counties in which the district is situated.

(14) He shall as soon as practicable after the thirty-first day of December in each year make an annual report (*l*) to the council, up to the end of December, on the sanitary circumstances, the sanitary administration, and the vital statistics of the district.

In addition to any other matters upon which he may consider it desirable to report, his annual report shall contain the information indicated in the following paragraphs; together with such further information as we may from time to time require:—

(a) An account of any influences threatening the health of the district, the prevalence of infectious or epidemic diseases therein, and the measures taken for their prevention.

(b) An account of all general and special inquiries made during the year.

(*l*) The Board suggest that these annual reports should be printed (Circular, January 15th, 1913).

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(c) An account of the work performed by the inspector of nuisances during the year, including the statement supplied in pursuance of Article XX. (16) of this Order.

(d) A statement as to the conditions affecting the wholesomeness of the milk produced or sold in the district.

(e) A statement as to the conditions affecting the wholesomeness of foods for human consumption, other than milk, produced or sold in the district.

(f) A statement as to the sufficiency and quality of the water supply of the district and of its several parts, and in areas where the supply is from waterworks, information as to whether the supply is constant or intermittent.

(g) A statement as to the pollution of rivers or streams in the district.

(h) A statement as to the character and sufficiency of the arrangements for the drainage, sewerage and sewage disposal in all parts of the district.

(i) A statement as to the privy, water-closet, and other closet accommodation in the district, including information as to the approximate number of each type of privy and closet.

(j) A statement as to the character and efficiency of the arrangements for the removal of house-refuse, and the cleansing of earth-closets, privies, ashpits, and cesspools in the district.

(k) A statement with regard to the housing accommodation of the district as required by Article V. of the Housing (Inspection of District) Regulations, 1910, and an account of any other action taken by the council under the Housing, Town Planning, &c. Act, 1909, bearing on the public health.

(l) A statement as to the vital statistics of the district, including a tabular statement, in such form as we may from time to time direct, of the sickness and mortality within the district.

(m) Where the medical officer of health is appointed by the council of a county borough, or by a council having delegated powers under the Midwives Act, 1902, a statement as to the administration of that Act in the district:

Provided that, if the medical officer of health shall resign or be removed before the thirty-first day of December in any year, he shall as soon as practicable after going out of office make to the council the like report for so much of the year as shall have expired when he ceased to hold office.

(15) He shall forthwith report to us any case of plague, cholera, or small pox, or of any serious outbreak of epidemic disease in the district which may be notified to him, or which may otherwise come or be brought to his knowledge.

(16) He shall transmit to us three copies of each annual report and one copy of any special report. At the same time that he transmits to us the copies of his annual report or of any special report, or that he reports to us a case of plague, cholera, or small pox, he shall transmit a copy of the report or give the like information to the county council or county councils of the county or counties within which the district is situated. Where the medical officer of health is appointed by the council of a county borough, or by a council having delegated powers under the Midwives Act, 1902, he shall also transmit to the Privy Council and to the Central Midwives Board either a copy of his annual report or of that part of it which contains the statement relating to the administration of the Midwives Act, 1902.

(17) In matters not specifically provided for in this Order, he shall observe and execute any instructions issued by us, and the lawful orders and directions of the council applicable to his office.

(18) Whenever we shall make regulations and shall declare the regulations so made to be in force within any area comprising the whole or any part of the district, he shall observe such regulations, so far as the same relate to or concern his office.

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Duties of Inspector of Nuisances.

ARTICLE XX.—The following shall be the duties of an inspector of nuisances as regards the district or part of the district for which he is appointed (in this article referred to as " his district ") :—

(1) Subject to the directions of the council, he shall perform, under the general supervision of the medical officer of health, all the duties specially imposed upon an inspector of nuisances by the Public Health Act, 1875, or by any other statute or statutes, or by the Orders issued by us, so far as the same apply to his office.

(2) He shall attend all meetings of the council, or of committees of the council, when so required.

(3) He shall by inspection of his district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement.

(4) On receiving notice of the existence of any nuisance within his district, or of the breach of any byelaws or regulations made by the council for the suppression of nuisances, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of byelaws or regulations.

(5) He shall report to the council any noxious or offensive businesses, trades, or manufactories established within his district, and the breach or non-observance of any byelaws or regulations made in respect thereof.

(6) He shall report to the council any damage done to any works of water supply, or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas, filth, or otherwise, of water used or intended to be used for domestic purposes.

(7) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places kept or used for the preparation or sale of butchers' meat, poultry, fish, fruit, vegetables, corn, bread, flour, milk, or any other article to which the provisions of the Public Health Acts in this behalf apply, and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or other article as aforesaid which may be therein ; and in case any such article appear to him to be intended for the food of man, and to be unfit for such food, he shall cause the same to be seized, and take such other proceedings as may be necessary in order to have the same dealt with by a justice. He shall also take such action as it may be necessary for him to take by virtue of the provisions of the Public Health (Regulations as to Food) Act, 1907, and any regulations made thereunder : Provided that in any case of doubt arising under this paragraph, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon.

(8) He shall, when and as directed by the council, procure and submit samples of food, drink, or drugs suspected to be adulterated, to be analysed by the analyst appointed under the Sale of Food and Drugs Act, 1875, and upon receiving a certificate stating that the articles of food, drink, or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act.

(9) He shall give immediate notice to the medical officer of health of the occurrence within his district of any infectious or epidemic disease ; and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall forthwith inform the medical officer of health thereof.

(10) He shall, subject to the directions of the council, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by an inspector of nuisances under the Public Health Act, 1875, or under any other statute or statutes, or

under any regulations issued by us, for preventing the spread of any infectious or epidemic disease.

(11) He shall enter from day to day, in a book to be provided by the council, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the council, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Public Health Act, 1875, or under any other statute or statutes, or under any regulations issued by us, and shall keep any other systematic records that the council may require.

(12) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.

(13) He shall, if directed by the council to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within his district.

(14) He shall, if directed by the medical officer of health to do so, remove, or superintend the removal of, patients suffering from infectious disease to an infectious diseases hospital and shall perform, or superintend, the work of disinfection after the occurrence of cases of infectious disease.

(15) He shall, if directed by the council to do so, act as officer of the council as local authority under the Diseases of Animals Acts, 1894 to 1909, the Canal Boats Acts, 1877 and 1884, and under any Orders or regulations made thereunder.

(16) He shall, as soon as practicable after the thirty-first day of December in each year, furnish the medical officer of health with a tabular statement containing the following particulars :

(a) the number and nature of inspections made by him during the year ;

(b) the number of notices served during the year, distinguishing statutory from informal notices ;

(c) the result of the service of such notices.

(17) In matters not specifically provided for in this Order, he shall observe and execute any orders and directions which may be hereafter issued by us and the lawful orders and directions of the council, applicable to his office.

PART II.

WITH RESPECT TO EVERY MEDICAL OFFICER OF HEALTH NO PART OF WHOSE SALARY IS INTENDED TO BE PAYABLE BY A COUNTY COUNCIL OR BY THE COUNCIL OF A COUNTY BOROUGH in pursuance of the Local Government Act, 1888, we hereby Order as follows :—

ARTICLE XXI.—The following shall be the duties of the medical officer of health in respect of the district for which he is appointed :—

(1) He shall, within seven days after his appointment, report his appointment in writing to us.

(2) He shall perform all the duties prescribed by Article XIX. of this Order for a medical officer of health in respect of whose salary a payment is intended to be made by a county council or by the council of a county borough as aforesaid.

PART III.

COMMENCEMENT OF ORDER.

ARTICLE XXII.—This Order shall take effect on the first day of January one thousand nine hundred and eleven, except Article X. thereof, which shall take effect on the first day of April, one thousand nine hundred and eleven.

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SHORT TITLE.

ARTICLE XXIII.—This Order may be cited as "The Sanitary Officers (outside London) Order, 1910."

SCHEDULE.

PUBLIC HEALTH ACT, 1875.

Proposal for Appointment of Medical Officer of Health,
or
Proposal for Appointment of Inspector of Nuisances.

(Under the provisions of the Sanitary Officers (outside London) Order, 1910.)

CITY.
BOROUGH.
URBAN DISTRICT.
RURAL DISTRICT.

1. State the name of the council by whom the appointment is to be made.
2. If it is proposed to appoint an officer acting for other districts, the names of the districts.
3. The area of the district or districts (in acres) for which the officer is to be appointed.
   (If the exact area is not known, it should be estimated as nearly as practicable, and the word "estimated" should be added.)
4. The population of the district or districts according to the last Census.
   (If the exact population is not known, it should be estimated as nearly as practicable, and the word "estimated" should be added.)
5. Whether it is proposed to make the appointment permanently or for a term of years, and in the latter case the term for which it is proposed that the appointment should be made.
6. The amount of the salary proposed.
7. Whether travelling expenses are allowed.
8. Where the proposal is for an alteration in salary, the grounds of the proposal.
9. Whether it is intended that the officer should give his whole time to the performance of the duties of his office.
10. If not,—
    (a) What time the officer is to give to the performance of the duties of the office.
    (b) What other public office or offices he is to hold, and the remuneration attached to each such office.
    (c) Whether he is to be allowed to engage in the private practice of his profession, or in private business.

*Signature*____________________
Clerk to the Council.
*Date*____________________

Given under the Seal of Office of the Local Government Board, this thirteenth day of December, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

GENERAL ORDER:—MEDICAL OFFICERS OF HEALTH AND INSPECTORS OF NUISANCES: REGULATIONS. PORTS. THE SANITARY OFFICERS (PORTS) ORDER, 1910.

To all Port Sanitary Authorities (except the Port Sanitary Authority of the Port of London); And to all others whom it may concern.

Whereas by Orders dated respectively the 25th day of September, 1878, and the 19th day of December, 1878, the 5th day of December, 1879, and the 2nd day of June, 1882, we, the Local Government Board, prescribed regulations with respect to medical officers of health and inspectors of nuisances appointed by port sanitary authorities;

And whereas by three General Orders dated the 19th day of July, 1883, we prescribed regulations with respect to every medical officer of health or inspector of nuisances appointed or re-appointed by a port sanitary authority on or after the 1st day of August, 1883, any portion of whose salary should be payable out of moneys voted by Parliament, and with respect to every medical officer of health, no portion of whose salary should be so payable:

Now therefore, in pursuance of the powers given to us by the statutes in that behalf, we hereby order that the above-cited Orders shall be rescinded from and after the thirty-first day of December, one thousand nine hundred and ten, and that the provisions of this Order shall, unless we otherwise direct, thenceforward apply to every medical officer of health and inspector of nuisances appointed by every port sanitary authority other than the port sanitary authority of the Port of London.

Part I.

With respect to the appointment, tenure of office, salary and duties of every Medical Officer of Health or Inspector of Nuisances, one-half of whose salary is intended to be payable by a County Council or County Councils in pursuance of the Local Government Act, 1888, we hereby order as follows:—

Qualification of Medical Officer.

Article I.—A person shall not be qualified to be appointed as medical officer of health unless he be duly registered under the Medical Acts, and be qualified by law to practise both medicine and surgery in England and Wales, that qualification being established in the case of persons registered before the thirtieth day of June, one thousand eight hundred and eighty-seven, by the production to the port sanitary authority of a diploma, certificate of a degree, or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical and surgical qualifications of the candidate for the office:

Provided that this requirement shall not apply in the case of the re-appointment of any existing officer.

Appointment of Medical Officer or Inspector.

Article II.—Before any appointment is made under this Order an advertisement specifying the district for which the appointment is to be made, together with the amount of the salary proposed to be assigned, shall be inserted in some public newspaper or newspapers circulating in the district of the port sanitary authority at least seven days before the date on which it is proposed that the appointment shall be considered by the port sanitary authority: Provided that in any special case in which the port sanitary authority may be of opinion that such an advertisement is not necessary, the appointment may, with our consent, be made without such advertisement.

Article III.—Every officer shall be appointed by a majority of the members present and voting on the question, at a meeting of the port sanitary authority consisting of more than three members, or by three members, if no more are present. The appointment shall be subject to our sanction. The appointment may be made without limit of time or for a specified term, and in cases

Appendix II. in which the appointment is for a term the port sanitary authority shall specify in the resolution making the appointment, or in a subsequent resolution, the term for which the appointment is made.

ARTICLE IV.—Every appointment shall, within seven days after it is made, be reported to us by the clerk to the port sanitary authority.

ARTICLE V.—Upon the occurrence of a vacancy, the port sanitary authority shall proceed to make a fresh appointment:

Provided that if the port sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to our approval.

ARTICLE VI.—Whenever notice has been given to terminate an appointment the port sanitary authority may proceed to make a fresh appointment to take effect from such termination.

ARTICLE VII.—If any officer be temporarily prevented by sickness or accident, or other sufficient reason, from performing his duties, the port sanitary authority may appoint a qualified person to act as his temporary substitute, and may pay to such person a reasonable remuneration for his services; and it shall not be necessary in any such case that the foregoing articles of this Order should be complied with, nor shall our approval be required to any such appointment, but no remuneration shall be paid in any case for a longer period than six weeks unless our consent be obtained.

ARTICLE VIII.—In the case of a port sanitary authority temporarily constituted being continued by the renewal of the Order constituting them, they may re-appoint an officer, or appoint his successor, at any time after the date of the Order of renewal.

Tenure of Office.

ARTICLE IX.—Every officer appointed to hold office without limit of time shall continue to hold office until he dies, or resigns, or is removed by the port sanitary authority with our assent, or is removed by us, or is proved to be insane by evidence which we shall deem sufficient.

ARTICLE X.—Subject to the provisions of this Order every officer appointed for a specified time shall, on the expiration of that term, unless the port sanitary authority three months prior to the expiration of the term by resolution otherwise determine, continue to hold office from year to year until he dies, or resigns, or is removed by the port sanitary authority with our assent, or is removed by us, or is proved to be insane by evidence which we shall deem sufficient: and no further re-appointment of the officer by the port sanitary authority and no further approval of his appointment on our part shall be required unless the terms of the appointment are altered:

Provided always that the port sanitary authority, after the expiration of the specified term, may terminate the appointment by giving to the officer three months' written notice of their intention to do so and such notice shall take effect at the same period of the year as that at which the original term expired and not otherwise. A copy of such notice shall be sent to us at the same time as the notice is sent to the officer:

Provided also that in the case of a port sanitary authority temporarily constituted, an officer shall not be appointed by them for a period extending beyond the date until which the port sanitary authority have been constituted.

ARTICLE XI.—The port sanitary authority may at any time, by resolution, and with our consent, appoint an officer who holds an appointment for a specified term to hold office without limit of time.

ARTICLE XII.—The port sanitary authority may, at their discretion, suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to us; and if we remove the suspension of the officer by the port sanitary authority, he shall forthwith resume the performance of his duties.

ARTICLE XIII.—Where any change in the extent of the district of any officer, or in his duties or salary, is deemed necessary by the port sanitary authority or by us, and he declines to acquiesce therein, the port sanitary

authority may, with our consent, but not otherwise, and after six months' notice in writing, signed by their clerk given to the officer, determine his office. Appendix II.

ARTICLE XIV.—A person shall not be appointed who does not agree to give at least one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

ARTICLE XV.—The port sanitary authority shall pay to every officer such salary as may be approved by us:

Provided that the port sanitary authority may, with our approval, pay to any officer a reasonable remuneration on account of extraordinary services, or other unforeseen or special circumstances connected with his duties or the necessities of the district for which he is appointed.

ARTICLE XVI.—The salary of every officer shall be payable up to the day on which he ceases to hold office, and no longer, subject to any deduction which the port sanitary authority may be entitled to make in pursuance of Article XIV. of this Order; and in case he dies whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives:

Provided that an officer who is suspended, and who, without the previous removal of such suspension, resigns or is removed under Article IX. or Article X. of this Order, shall not be entitled to any salary from the date of such suspension.

ARTICLE XVII.—The salary assigned to every officer shall be an annual salary payable in four equal instalments, on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in each year; but the port sanitary authority may pay to him on account at the expiration of every calendar month such proportion of his annual salary as they think fit.

ARTICLE XVIII.—All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of the Apportionment Act, 1870.

Duties of Medical Officer of Health.

ARTICLE XIX.—The following shall be the duties of the medical officer of health in respect of the port sanitary district for which he is appointed:—

(1) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the health of crews and other persons on ship-board within the district.

(2) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases in the ships and other vessels within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3) He shall by inspection of the shipping in the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.

(4) He shall be prepared to advise the port sanitary authority on all matters affecting the health of the crews and other persons on ship-board in the district, and on all sanitary points involved in the action of the port sanitary authority; and in cases requiring it he shall certify, for the guidance of the port sanitary authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5) On receiving information of the arrival within the district of any ship or other vessel having any infectious or epidemic disease of a dangerous character on board, or of the outbreak of any such disease on board any ship or other vessel within the district, he shall visit the vessel

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without delay and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the persons competent to act as to the measures which appear to him to be required to prevent the extension of the disease, and shall take such measures for the prevention of disease as he is legally authorised to take under any statute in force in the district, or by any resolution of the port sanitary authority.

(6) On receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a ship or other vessel, he shall, as early as practicable, take such steps as he is legally authorised to take under any statute in force in the district, or by any resolution of the port sanitary authority as the circumstances of the case may justify and require.

(7) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the port sanitary authority, he shall himself inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, and any other article to which the provisions of the Public Health Acts in this behalf apply, exposed for sale or deposited for the purpose of sale or of preparation for sale, within the district, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man; and if he finds that such animal or article is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be dealt with by a justice according to the provisions of the statutes applicable to the case. He shall also take such action as it may be necessary for him to take by virtue of the provisions of the Public Health (Regulations as to Food) Act, 1907, and any regulations made thereunder.

(8) He shall perform all the duties imposed upon him by any byelaws and regulations of the port sanitary authority, duly confirmed where confirmation is legally required, in respect of any matter affecting the public health, and touching which they are authorised to frame byelaws and regulations.

(9) He shall attend at the office of the port sanitary authority, or at some other appointed place, at such stated times as they may direct.

(10) He shall from time to time report in writing to the port sanitary authority his proceedings, and the measures which may require to be adopted for the improvement or protection of the health of crews or other persons on ship-board in the district. He shall in like manner report with respect to the sickness and mortality of persons on ship-board within the district, so far as he has been able to ascertain the same.

(11) He shall keep a book or books, to be provided by the port sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon, and of every action taken on previous reports; and shall produce such book or books, whenever required, to the port sanitary authority.

(12) On Monday, the ninth day of January, one thousand nine hundred and eleven, and on every Monday thereafter, he shall forward to us by post, at such an hour as in the ordinary course of post will ensure its delivery to us on the following Tuesday morning a return, in such form as we from time to time require, of the number of cases of infectious disease notified to him during the week ended on the preceding Saturday night. He shall also forward at the same time a duplicate of the return to the medical officer or officers of health of the county or counties in which the port sanitary district is situated.

(13) He shall as soon as practicable after the thirty-first day of December in each year make an annual report to the port sanitary authority, up to the end of December.

The report, in addition to any other information which he may consider it desirable, or be required by us to give, shall comprise :—

(a) Tabular statements (so far as he shall have been able to obtain the information) as to the sickness and mortality of persons on shipboard within the district, classified according to diseases, ages, and vessels.

(b) A summary of the action taken by him during the year for preventing the spread of disease.

(c) An account of the proceedings in which he has taken part or advised under the Acts, Orders and regulations relating to matters of public health and the examination of foods in force within the district.

(d) An account of the work performed by the inspector of nuisances during the year, including the statement supplied in pursuance of Article XX. (12) of this Order.

Provided that, if the medical officer of health shall resign or be removed before the thirty-first day of December in any year, he shall as soon as practicable after going out of office make to the port sanitary authority the like report for so much of the year as shall have expired when he ceased to hold office.

(14) He shall forthwith report to us any case of plague, cholera, or small-pox, or of any serious outbreak of epidemic disease on ship-board within the district which may be notified to him, or which may otherwise come or be brought to his knowledge.

(15) He shall transmit to us three copies of each annual report and one copy of any special report. At the same time that he transmits to us a copy of his annual report or of any special report, or that he reports to us a case of plague, cholera, or small-pox, he shall transmit a copy of the report or give the like information to the county council or county councils of the county or counties within which the district is situated.

(16) Where any vessel within his district has had dangerous infectious disease on board, he shall give notice thereof to the medical officer of health of any port within the United Kingdom whither such vessel is about to sail.

(17) In matters not specifically provided for in this Order, he shall observe and execute any instructions issued by us, and the lawful orders and directions of the port sanitary authority applicable to his office.

(18) Whenever we shall make regulations and shall declare the regulations so made to be in force within any area comprising the whole or any part of the district, he shall observe such regulations, so far as the same relate to or concern his office.

Duties of Inspector of Nuisances.

ARTICLE XX.—The following shall be the duties of the inspector of nuisances in respect of the port sanitary district or part of the district (in this article referred to as "his district") for which he is appointed :—

(1) Subject to the directions of the port sanitary authority, or, in cases where no such directions are required, without such directions, he shall perform, under the general supervision of the medical officer of health, all the duties specially imposed upon an inspector of nuisances by the sections of the Public Health Act, 1875, which shall apply to the port sanitary authority, or by the Orders issued by us, so far as the same apply to his office.

(2) He shall attend all meetings of the port sanitary authority when so required.

(3) He shall by inspection of the shipping in his district, both systematically at certain periods and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement.

(4) On receiving notice of the existence of any nuisance on board of any

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ship or other vessel within his district, or of the breach of any byelaws or regulations made by the port sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the vessel, and inquire into such alleged nuisance or breach of byelaws or regulations.

(5) He shall give immediate notice to the medical officer of health of the occurrence within his district of any infectious or epidemic disease, or of the arrival within his district of any ship or other vessel having such disease on board; and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a vessel, he shall forthwith inform the medical officer thereof.

(6) He shall, subject in all respects to the directions of the port sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by him under the Public Health Act, 1875, for preventing the spread of any infectious or epidemic disease.

(7) He shall enter from day to day, in a book to be provided by the port sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the port sanitary authority, so arranged as to form, as far as possible, a record of the sanitary condition of each of the ships or other vessels in respect of which any action has been taken under the Public Health Acts, and shall keep any other systematic records that the port sanitary authority may require.

(8) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.

(9) He shall, if directed by the port sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within his district.

(10) He shall, if directed by the port sanitary authority to do so, remove, or superintend the removal of, patients suffering from infectious disease to an infectious diseases hospital and shall perform, or superintend, the work of disinfection after the occurrence of cases of infectious disease.

(11) He shall, if directed by the port sanitary authority to do so, act as officer of the council as local authority under the Diseases of Animals Acts, 1894 to 1910, the Canal Boats Acts, 1877 and 1884, and under any Orders or regulations made thereunder.

(12) He shall, as soon as practicable after the thirty-first day of December in each year, furnish the medical officer of health with a tabular statement containing the following particulars :—

(a) The number of inspections made by him during the year, and the number of ships and vessels in respect of which such inspections were made.

(b) The number and nature of the sanitary defects found, as a result of inspection or otherwise, to exist upon ships and vessels or elsewhere within his district during the year.

(c) The number of notices served during the year, distinguishing statutory from informal notices.

(d) The result of the service of each notice.

And, if he has been appointed, with our consent, to act as an assistant officer under the Public Health (Regulations as to Food) Act, 1907, and the regulations made thereunder, he shall add to the tabular statement as required above :—

(e) An account of the action taken by him under the said Act and regulations

(13) In matters not specifically provided for in this Order, he shall observe and execute any orders and directions which may be hereafter issued by us, and the lawful orders and directions of the port sanitary authority applicable to his office.

PART II.

WITH RESPECT TO EVERY MEDICAL OFFICER OF HEALTH NO PART OF WHOSE SALARY IS INTENDED TO BE PAYABLE by a county council or by the council of a county borough in pursuance of the Local Government Act, 1888, we hereby order as follows :—

Qualification.

ARTICLE XXI.—A person shall not be qualified to be appointed as medical officer of health unless he be duly registered under the Medical Acts, and be qualified by law to practise both medicine and surgery in England and Wales, that qualification being established in the case of persons registered before the thirtieth day of June, one thousand eight hundred and eighty-seven, by the production to the port sanitary authority of a diploma, certificate of a degree, or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical and surgical qualifications of the candidate for the office :

Provided that this requirement shall not apply in the case of the re-appointment of any existing officer.

ARTICLE XXII.—The following shall be the duties of the medical officer of health in respect of the port sanitary district for which he is appointed :—

(1) He shall, within seven days after his appointment, report the same in writing to us.

(2) He shall perform all the duties prescribed by Article XIX. of this Order for a medical officer of health in respect of whose salary a payment is intended to be made by a county council or the council of a county borough as aforesaid.

PART III.

COMMENCEMENT OF ORDER.

ARTICLE XXIII.—This Order shall take effect on the first day of January one thousand nine hundred and eleven, except Article X. thereof, which shall take effect on the first day of April, one thousand nine hundred and eleven.

SHORT TITLE.

ARTICLE XXIV.—This Order may be cited as "The Sanitary Officers (Ports) Order, 1910."

Given under the Seal of Office of the Local Government Board, this twenty-first day of December, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

F. J. WILLIS, *Assistant Secretary.*

GENERAL ORDER :—MEDICAL OFFICERS OF HEALTH : DUTIES. COUNTIES OTHER THAN LONDON.

TO THE COUNTY COUNCIL of every ADMINISTRATIVE COUNTY in England and Wales other than London; and to all others whom it may concern.

WHEREAS it is enacted by sub-section (2) of section 68 of the Housing, Town Planning, &c. Act, 1909 (hereinafter referred to as "the Act of 1909"), that the duties of a medical officer of health of a county shall be such duties as may be prescribed by General Order of the Local Government Board and such other duties as may be assigned to him by the county council ;

And whereas by virtue of section 70 of the Act of 1909 the above cited sub-section does not apply to the administrative county of London :

NOW THEREFORE, we, the Local Government Board, in pursuance of the powers given to us in that behalf, by this Order prescribe the following duties

Appendix II. as the duties of every medical officer of health of a county other than the administrative county of London; that is to say:—

(1) The medical officer of health of the county shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health in the county. For this purpose he shall visit the several county districts in the county as occasion may require, giving to the medical officer of health of each county district prior notice of his visit, so far as this may be practicable.

(2) The medical officer of health of the county shall from time to time inquire into and report upon the hospital accommodation available for the isolation of cases occurring in the county—

(a) of small-pox, and

(b) of other infectious diseases,

and upon any need for the provision of further hospital accommodation.

(3) The medical officer of health of the county shall communicate to the medical officer of health of a county district within the county any information which he may possess as to any danger to health threatening that district.

(4) The medical officer of health of the county shall consult with the medical officers of health of county districts within the county whenever the circumstances may render this desirable.

(5) If the annual or special reports of the medical officer of health of a county district shall not contain adequate information in regard to

(a) the vital statistics of the district,

(b) the sanitary circumstances and administration of the district, and

(c) the action taken in the district for putting in force the provisions of the Housing of the Working Classes Acts, 1890 to 1909,

the medical officer of health of the county shall obtain from the medical officer of health of the county district such further information on those matters as the circumstances may demand.

(6) The medical officer of health of the county shall, when directed by us, or by the county council, or as occasion may require, make a special report to the county council on any matter appertaining to his duties under this Order.

(7) The medical officer of health of the county shall as soon as practicable after the 31st day of December in each year make an annual report to the county council up to the end of December on the sanitary circumstances, the sanitary administration and the vital statistics of the county.

In addition to any other matters upon which the medical officer of health may consider it desirable to report, his annual report shall contain the following sections:—

(a) A digest of all annual and special reports made by the medical officers of health of all county districts within the county:

(b) a section as to the isolation hospital accommodation available for each county district and as to the steps which should be taken to remedy any deficiencies which may exist;

(c) a section on the administration of the Housing of the Working Classes Acts, 1890 to 1909, within the county;

(d) a section on the water supply of the several county districts within the county;

(e) a section on the pollution of streams within the county and as to the steps for the prevention of pollution taken:—

(i.) by the local authorities, and

(ii.) by the county council;

(f) a section on the administration within the county of the Midwives Act, 1902; and

(g) a section on the administration of the Sale of Food and Drugs Acts, 1875 to 1907, within that part of the county in which the county council have jurisdiction for the purposes of those Acts.

(8) The medical officer of health of the county shall send to us two copies of his annual report and two copies of any special report; he shall also send one copy of his annual report to the council of every county

district in the county and shall send three copies of any special report to the council of every such county district affected by the special report. Appendix II.

This Order may be cited as the County Medical Officers of Health (Duties) Order, 1910.

Given under the Seal of Office of the Local Government Board, this twenty-ninth day of July, in the year one thousand nine hundred and ten.

(L.S.) JOHN BURNS, *President.*

H. C. MUNRO, *Secretary.*

PUBLIC ANALYSTS—GENERAL ORDER.

(March 7th, 1900.)

SALE OF FOOD AND DRUGS ACTS, 1875 TO 1899—APPOINTMENT OF PUBLIC ANALYST: REGULATION AS TO COMPETENCY.

TO THE SEVERAL LOCAL AUTHORITIES for the time being required by law to appoint a public analyst; And to all others whom it may concern.

WHEREAS by the Sale of Food and Drugs Acts provision is made for the appointment by certain local authorities of persons to act as analysts of all articles of food and drugs, and every such appointment is made subject to the approval of the Local Government Board;

And whereas by sub-sections (1) and (5) of section 3 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act"), it is enacted as follows:

"(1) It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst . . ."

"(2) Any public analyst appointed under the Sale of Food and Drugs Act shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board."

And whereas by section 25 of the Act it is enacted as follows:

"In this Act unless the context otherwise requires—

* * * * *

"The expression 'local authority' means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Act, and the expression 'public analyst' means an analyst so appointed."

Now, therefore, we, the Local Government Board, in pursuance of the powers given to us by sub-section (5) of section 3 of the Act do hereby order that the following regulation shall have effect; that is to say—

Every person appointed on or after the 1st of January, 1900, to the office of public analyst shall furnish such proof as we may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy.

Such proof shall in every case comprise documentary evidence that such person holds the requisite certificate, diploma, licence, or document conferring the qualification or attesting his possession of the skill or knowledge to which the same applies, and granted or issued by any person or body of persons for the time being recognised by us as competent to confer such qualification or to test such skill or knowledge. Such proof also shall comprise such further evidence as we may in any particular case require.

All such documentary evidence as is hereinbefore mentioned shall be furnished by such person to the local authority by whom he is appointed and shall be transmitted to us by the local authority when applying for our approval of the appointment:

Provided that nothing in this regulation contained shall, in the case of any person who was appointed to the office of public analyst with our approval between the 1st of January, 1891, and the date hereof, or of any person who is so appointed for the first time after such last-mentioned date, apply upon any subsequent appointment of such person to the said office.

Given under the Seal of Office of the Local Government Board, this seventh day of March, in the year one thousand nine hundred.

(L.S.) HENRY CHAPLIN, *President.*

S. B. PROVIS, *Secretary.*

Appendix II.

OFFICES AND BUILDINGS.

USE OF BUILDINGS OF LOCAL AUTHORITIES FOR MEETINGS OF TRADE UNIONS AND OTHER BODIES—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
23*rd March*, 1908.

SIR,—I am directed by the Local Government Board to state that representations have been made to them as to the difficulty experienced by trade unions, friendly societies and other similar bodies in finding accommodation for their meetings in existing buildings, except in public-houses or other licensed premises. Inquiries have been made of the Board as to the power of the local authorities to render assistance in order to meet this difficulty, and the President lately received a deputation on the subject.

The Board direct me to state that, whilst a local authority would not be empowered under the general law to provide buildings for meetings of the bodies referred to, yet where the authority are in possession of a town hall or offices provided for their own meetings or for the transaction of their business, it is competent for them to place the accommodation thus provided, when not required for their own purposes, at the service of any of these bodies on terms which may enable them to have a temporary use of the premises without expense to the local authority.

The Board are desirous of bringing this matter under the notice of the local authorities. They cannot but feel that it is very undesirable that the bodies in question should be compelled to hold their meetings on licensed premises, especially when it is remembered that the business transacted at these meetings often necessitates the presence of women and children for a considerable time. The temptations and the evil results arising from this state of things are well known to local authorities and particularly to boards of guardians, and the Board trust that the local authorities will be willing to allow the use of their buildings for the purposes of the meetings referred to where the circumstances admit of their so doing. It will be necessary that arrangements should be made to prevent any expense from falling on the local authority, but the Board do not apprehend that there will be any difficulty in this being done.

Usually no consent on the part of the Board will be requisite to the use of the buildings for the purposes mentioned. In the case of the letting of the room in a workhouse or in the office of a Poor Law union, such consent should be obtained, but the Board will be ready to give it, subject to the guardians reserving to themselves the power to determine the arrangement if at any time it is regarded as detrimental to the use of the buildings for Poor Law purposes.

Parish councils are authorised by section 8 (1) (a) of the Local Government Act, 1894, to provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting.

Section 33 of the Act empowers the Board, on the application of the council of a borough or urban district, to confer on them any of the powers of a parish council, and the Board have in exercise of this power, in many instances conferred on the councils of boroughs and urban districts the powers of a parish council under section 8 (1) (a) with regard to the provision or acquisition of buildings for public offices and for meetings.

They may also draw attention to the power given to the metropolitan borough councils under the London County Council (General Powers) Act, 1893, of providing halls and buildings partly for the purpose of transacting their own business and partly for the purpose of public meetings, and of adapting or altering their existing town halls and offices for these purposes.

I am directed to add that this circular will be placed on sale, so that copies may shortly be obtained from Messrs. Wyman and Sons, Limited, Fetter Lane, E.C., either directly or through any bookseller.

I am, etc.,
S. B. PROVIS, *Secretary.*

The Town Clerk, or
The Clerk to the Urban or Rural District Council, or
The Clerk to the Guardians, or
The Clerk to the Parish Council.

Appendix II.

USE OF BUILDINGS OF LOCAL AUTHORITIES FOR THE AUDIT OF THE ACCOUNTS OF APPROVED SOCIETIES AND PURPOSES CONNECTED THEREWITH—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
5th December, 1912.

SIR,—I am directed by the Local Government Board to state that representations have been made to them by the Lords Commissioners of His Majesty's Treasury as to a difficulty which it is anticipated will arise in some cases in finding suitable office accommodation for conducting the audit of the accounts of approved societies under the National Insurance Act, 1911. The Board are informed that many societies have no office of their own, and that where instructions are being given to the officials of such societies by the auditors of the National Health Insurance Commission it has been found necessary to make use of private premises. Their lordships consider that it is undesirable that the proceedings of a formal audit should take place in private houses or that recourse should be had to the use of rooms on licensed premises, and the Board concur in this view.

Apart from the provisions contained in section 27 (2) of the Act, it appears to the Board to be competent to a local authority to place accommodation provided for their own meetings or for the transaction of their business at the disposal, when not otherwise required, of approved societies for the purpose of the audits referred to on terms which may enable the societies to have a temporary use of the premises without expense to the local authority.

The Board are desirous of bringing this matter under the notice of local authorities and trust that they will be willing to allow the use of their buildings for the purposes in question where the circumstances admit of their doing so.

Usually no consent on the part of the Board will be requisite to the use of the buildings in the manner suggested. In the case of a room belonging to a board of guardians, however, such consent needs to be obtained, and the Board will be ready to give it subject to the guardians reserving to themselves the power to determine the arrangement if at any time it is regarded as inconvenient.

The Board hope that local authorities will give the suggested arrangement their favourable consideration.

I am directed to add that this circular will be placed on sale, so that copies may shortly be obtained from Messrs. Wyman and Sons, Limited, Fetter Lane, E.C., either directly or through any bookseller.

I am, Sir, your obedient servant,

H. C. MUNRO, *Secretary*.

The Town Clerk, or
The Clerk to the Urban or *Rural District Council*.
The Clerk to the Guardians.

PETROLEUM AND CARBIDE OF CALCIUM.

ORDER IN COUNCIL UNDER THE PETROLEUM ACT, 1871.

WHEREAS it is provided by the Petroleum Act, 1871, that His Majesty may, from time to time, make, revoke, and vary Orders in Council directing that the said Act or any part thereof shall apply to any substance, and that the said Act or the part thereof specified in any such Order shall, during the continuance of the Order, apply to such substance, and shall be construed and have effect as if such substance had been included in the definition of petroleum to which that Act applies, subject to the following qualifications :—

1. The quantity of any substance to which this Act is directed by Order in Council to apply which may be kept without a licence, shall be such quantity only as is specified in that behalf in such Order, or if no such quantity is specified no quantity may be kept without a licence.

Appendix II.
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2. The label on the vessel containing such substance shall be such as may be specified in that behalf in the Order.

And whereas the Petroleum Act, 1879, and the Petroleum (Hawkers) Act, 1881, are to be construed as one with the Petroleum Act of 1871, and may, together with such Act, be cited as the Petroleum Acts, 1871 to 1881.

And whereas carbide of calcium presents dangers similar to those presented by petroleum.

Now, therefore, in pursuance of the above-mentioned provisions of the Petroleum Act, 1871, His Majesty is pleased, by and with the advice of his Privy Council, to order and prescribe that the under-mentioned parts of the Petroleum Acts, 1871 to 1881, shall apply to the said substance, carbide of calcium, in the same manner as if the said substance were petroleum to which the Acts apply, viz. :—

The whole of the Petroleum Acts, 1871 to 1881, except :—

(a) So much of section 6 of the Petroleum Act, 1871, as specifies the nature of the label to be on the vessel, in lieu of which the label shall be as hereinafter provided.

(b) So much of section 7 of the Petroleum Act, 1871, as relates to the exemption from such section of small quantities under certain specified conditions, and the quantity of carbide of calcium that may be kept without a licence shall be as hereinafter provided.

(c) So much of section 11 of the Petroleum Act, 1871, as relates to the testing of samples taken by an officer of the local authority under the powers conferred by such section.

(d) So much of the Petroleum Act, 1879, as relates to the testing of petroleum.

(e) So much of the Petroleum Act, 1881, as relates to the hawking of petroleum.

The label on the vessel containing the said carbide of calcium shall bear in conspicuous characters the words "carbide of calcium," "dangerous if not kept dry," and with the following caution : "The contents of this package are liable if brought into contact with moisture to give off a highly inflammable gas," and with the addition :—

(a) In the case of a vessel kept, of the name and address of the consignee or owner.

(b) In the case of a vessel sent or conveyed, of the name and address of the sender.

(c) In the case of a vessel sold or exposed for sale, of the name and address of the vendor.

The quantity of carbide of calcium that may be kept without a licence shall be as follows :—

1. Where the carbide is kept in separate hermetically-closed metal vessels containing not more than 1 lb. each, 5 lb.

2. Where the following conditions are observed, 28 lb.

(a) The carbide shall be kept only in a metal vessel or vessels hermetically closed at all times when the carbide is not actually being placed in or withdrawn from such vessel or vessels.

(b) The vessels containing carbide shall be kept in a dry and well-ventilated place.

(c) Due precautions shall be taken to prevent unauthorised persons from having access to the carbide.

(d) Notice shall be given of such keeping to the local authority, and free access shall be afforded to their duly authorised inspector to inspect the portion of the premises where the carbide is kept and the generator is situated.

Where a fixed generator is used on the premises :—

(e) There shall be exhibited near the generator a certificate signed by the maker or supplier of the generator, that the generator complies with the regulations as to acetylene generators issued by the British Acetylene Association.

(f) Full and detailed instructions as to the care and use of the generator shall be kept constantly posted up in such place as to be conveniently referred to by the generator attendant.

3. Where the carbide is kept by a general lighthouse authority, as defined

by the Merchant Shipping Act, 1894, such quantity as may be required for the purposes of such authority, provided that :— Appendix II.

(a) The carbide is kept only in a metal vessel or vessels hermetically closed at all times when the carbide is not actually being withdrawn from such vessel or vessels.

(b) The vessels containing carbide are kept in a dry and well-ventilated building exclusively appropriated to the keeping of carbide, and detached from a dwelling-house or separated therefrom by a substantial partition with no opening in it.

(c) Due precautions are taken to prevent unauthorised persons from having access to the carbide.

(d) No artificial light capable of igniting inflammable vapour is allowed to be taken into the building in which the carbide is kept.

All previous Orders in Council relating to the keeping of carbide of calcium, viz., Orders dated 26th February, 1897, 7th July, 1897, and 24th October, 1904, are hereby repealed.

ALMERIC FITZROY.

August 8th, 1911.

LOCOMOTIVE.

PETROLEUM.

REGULATIONS DATED JULY 31ST, 1907, MADE BY THE SECRETARY OF STATE UNDER SECTION 5 OF THE LOCOMOTIVES ON HIGHWAYS ACT, 1896, AS TO THE KEEPING AND USE OF PETROLEUM FOR THE PURPOSES OF LIGHT LOCOMOTIVES.

Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36, s. 5).

In promulgating the following regulations relating to the keeping, conveyance and use of petroleum in connection with light locomotives, the Secretary of State for the Home Department desires to direct public attention to the dangers that may arise from the careless use of the more volatile descriptions of petroleum, commonly known as petroleum spirit. Not only is the vapour therefrom, which is given off at ordinary temperatures, capable of being easily ignited, but it is also capable, when mixed with air, of forming an explosive atmosphere. It is, therefore, necessary, in dealing with and handling the spirit, to take strict precautions by the employment of thoroughly sound and properly closed vessels to prevent leakage of the spirit, and by avoiding the use of naked lights in dangerous proximity to prevent the contact of any form of artificial light with the highly inflammable vapour which it is always evolving.

REGULATIONS.

By virtue of the powers conferred on me by the fifth section of the Locomotives on Highways Act, 1896, I hereby make the following regulations for the keeping and use of petroleum for the purposes of light locomotives (*m*).

In these regulations the expression "petroleum spirit" shall mean the petroleum to which the Petroleum Acts, 1871 and 1879, apply, provided that when any petroleum other than that to which the said Petroleum Acts apply, is on or in any light locomotive, or is being conveyed or kept in any place on or in which there is also present any petroleum spirit as above defined, the whole of such petroleum shall be deemed to be petroleum spirit.

In these regulations the expression "storehouse" shall mean any room, building, coachhouse, lean-to, or other place in which petroleum spirit for the purposes of light locomotives is kept (*n*) in pursuance of these regulations and shall include an open-air place of storage, when and so long as due precautions for the prevention of unauthorised persons having access to the petroleum spirit are taken in pursuance of No. 13 of these regulations.

(*m*) Under the seventh section of the Act, a breach of these regulations may, on summary conviction, be punished by a fine not exceeding ten pounds.

(*n*) Petrol in a car standing in a shed is "kept" in the shed, and therefore the shed is a "storehouse" (*Appleyard* v. *Bangham* (1913), 77 J. P. 448).

Appendix II.
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1. The following shall be exempt from licence under the Petroleum Act, 1871, namely :—

(a) petroleum spirit which is kept for the purpose of, or is being used on, light locomotives when kept or used in conformity with these regulations.

(b) Petroleum spirit which is kept for the purpose of, or is being used on, light locomotives by, or by authority of, one of His Majesty's Principal Secretaries of State, the Admiralty, or other department of the Government.

2. These regulations shall apply to petroleum spirit which is kept for the purpose of, or is being used on, light locomotives, and for which (save as hereinafter provided) no licence has been granted by the local authority under the Petroleum Act, 1871, and shall not apply to petroleum spirit which is kept for sale, or partly for use on light locomotives, and which must be kept in accordance with the provisions of the Petroleum Acts as heretofore, except that Regulations 13 and 14 shall apply to petroleum spirit which is kept partly for sale and partly for use in light locomotives.

These regulations shall not apply to the keeping or use of petroleum spirit by or under the control of any Government department. Such keeping or use may be the subject of regulations to be made by the department concerned.

3. Where for any special reason a person keeping petroleum spirit for the purpose of light locomotives applies for a licence under the Petroleum Act, 1871, and the local authority see fit to grant such licence, such petroleum spirit shall be subject only to regulations 8 to 15 and the conditions of such licence, in so far as the said conditions are not contrary to the said regulations 8 to 15.

4. Where a storehouse forms part of, or is attached to, another building, and where the intervening floor or partition is of an unsubstantial or highly inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storehouse, and no portion of such storehouse shall be used as a dwelling or as a place where persons assemble. A storehouse shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

5. The amount of petroleum spirit to be kept in any one storehouse, whether or not upon light locomotives, shall not exceed 60 gallons at any one time.

6. Where two or more storehouses are in the same occupation and are situated within 20 feet of one another, they shall for the purposes of these regulations be deemed to be one and the same storehouse, and the maximum amount of petroleum spirit prescribed in the foregoing regulation shall be the maximum to be kept in all such storehouses taken together. Where two or more storehouses in the same occupation are distant more than 20 feet from one another, the maximum amount shall apply to each storehouse.

7. Any person who keeps petroleum spirit in a storehouse which is situated within 20 feet of any other building whether or not in his occupation, or of any timber stack or other inflammable goods not owned by him, shall give notice to the local authority under the Petroleum Acts for the district in which he is keeping such petroleum spirit, that he is so keeping petroleum spirit, and shall renew such notice in the month of January in each year during the continuance of such keeping, and shall permit any duly authorised officer of the local authority to inspect such petroleum spirit at any reasonable time. This regulation shall not apply to petroleum spirit kept in a tank forming part of a light locomotive.

8. Every storehouse shall be thoroughly ventilated.

9. Petroleum spirit shall not be kept, used, or conveyed except in metal vessels so substantially constructed as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective or insecure. Every such vessel shall be so constructed and maintained that no leakage, whether of liquid or vapour, can take place therefrom.

10. Every such vessel, not forming part of a light locomotive, when used for conveying or keeping petroleum spirit shall bear the words "petroleum spirit highly inflammable" conspicuously and indelibly stamped and marked

thereon, or on a metallic or enamelled label attached thereto, and shall be of a capacity not exceeding two gallons.

Provided that this limitation of capacity shall not apply in any place of storage which is licensed under the Petroleum Act, 1871, unless such limitation is required by the conditions of the licence.

11. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all petroleum spirit and of all dangerous vapours derived from the same.

12. The filling or replenishing a vessel with petroleum spirit shall not be carried on, nor shall the contents of any such vessel be exposed in the presence of fire or artificial light, except a light of such construction, position, or character, as not to be liable to ignite any inflammable vapour arising from such spirit, and no fire or artificial light capable of igniting inflammable vapour shall be brought within dangerous proximity of the place where any vessel containing petroleum spirit is being kept.

13. In the case of all petroleum spirit kept or conveyed for the purpose of, or in connection with, any light locomotive, (a) all due precautions shall be taken for the prevention of accidents by fire or explosion, and for the prevention of unauthorised persons having access to any petroleum spirit kept or conveyed, and to the vessels containing or intended to contain, or having actually contained the same; and (b) every person managing, or employed on, or in connection with, any light locomotive shall abstain from every act whatever which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act.

14. In the storehouse or in any place where a light locomotive is kept or is present, petroleum spirit shall not be used for the purpose of cleaning or lighting, or as a solvent or for any purpose other than as fuel for the engine of a light locomotive.

Provided that where due precaution is taken to prevent petroleum spirit from escaping into a sewer or drain and provision made for disposing safely of any surplus petroleum spirit and where no fire or naked light is present, quantities not exceeding one gill may be used for the cleaning of a light locomotive at a safe distance from any building, place of storage of inflammable goods, or much-frequented highway, or for the repair of tyres, under suitable conditions.

This regulation shall apply to premises on which petroleum spirit is kept for the purpose of, or is being used on, light locomotives, whether such premises are licensed or not, unless the local authority see fit, in the case of licensed premises to grant an exemption by a special term of the licence.

15. Petroleum shall not be allowed to escape into any inlet or drain communicating with a sewer.

16. These regulations shall come into operation on the 15th August, 1907, from which date all previous regulations made under the fifth section of the said Act are hereby repealed.

H. J. Gladstone,

One of His Majesty's Principal Secretaries of State.

Whitehall,
31*st July*, 1907.

Note.—*From the above regulations it will be seen that there are two methods in which petroleum spirit required for use in motor cars may be kept. The first of these will be the usual method, namely, to keep in accordance with these regulations; but where a person finds that for some special reason he cannot observe one of the regulations* 4, 5, *or* 6, *he may resort to the second method, namely, to apply to the local authority for a licence. In such cases the place will be examined by the local authority officer, who will advise the local authority as to its suitability for licence. Where a licence has been granted regulations* 4 *to* 7 *no longer apply.*

In no case is petroleum spirit kept wholly or partly for sale exempt from the necessity of a licence.

Appendix II.

PORT SANITARY AUTHORITIES.

See "DISEASES," AND "OFFICERS," *ante*.

PROVISIONAL ORDERS.

PROVISIONAL ORDERS UNDER THE PUBLIC HEALTH ACT 1875, THE GAS AND WATER WORKS FACILITIES ACTS AND THE LOCAL GOVERNMENT ACT, 1888—CIRCULAR. (*o*).

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.
1*st September*, 1913.

SIR,—I am directed by the Local Government Board to state that they deem it desirable to follow the practice of previous years, and to fix dates before which all applications must be made for Provisional Orders under the Public Health Act, 1875, *and section* 54 (1) (*a*) *of the Local Government Act*, 1888, if it is wished that the Order should be confirmed during the session of 1914. The necessity for this course is the more apparent in view of Standing Order 193 (A) of the House of Commons which provides that no Bill originating in that House for confirming a Provisional Order shall be read the first time after Whitsuntide. Experience shows that unless this date is strictly adhered to, it will probably be impossible for Bills to confirm Provisional Orders to reach the House of Lords by the date necessary to ensure compliance with the Lords' Sessional Order relating to the second reading of such Bills.

The Board have accordingly determined that all such applications must be received by them not later than the dates mentioned in the Provisional Order Instructions enclosed herewith, and it must be clearly understood that those dates are fixed as the latest at which applications for Provisional Orders can be received. It is obviously desirable that, wherever practicable, the applications should be made earlier, and the Board therefore trust that every council who may propose to apply for a Provisional Order will make their application as soon as they are in a position to furnish the requisite particulars.

It is particularly desirable that applications for Provisional Orders to alter local Acts *and for the alteration of the boundaries of boroughs* should be made at the earliest possible date. These applications generally require much consideration, and the Board are able to give more attention to them in the autumn than is possible during the earlier part of the following year.

The Board have revised the instructions which they have been accustomed to issue relating to applications for Provisional Orders under the Public Health Act, 1875, *and section* 54 (1) (*a*) *of the Local Government Act*, 1888, and copies of the revised instructions are enclosed.

If the council propose to apply for a Provisional Order for gas purposes under the Gas and Water Works Facilities Acts, the special regulations which have been issued by the Board under those Acts, copies of which can be obtained on application, must be complied with.

I am to add that in dealing with applications for the sanction by the Board of the costs incurred by a council in promoting or opposing a Provisional Order under section 298 of the Public Health Act, 1875 (*which section is made applicable to Provisional Orders under the Local Government Act*, 1888, *by section* 87 (2) *of that Act*), it is the practice of the Board to require that such costs shall be taxed by the taxing officer of one of the Houses of Parliament. It will not, therefore, be necessary to submit such costs for taxation by the clerk of the peace.

In connection with the question of costs the Board think it necessary to draw attention to the fact that one of the advantages which should attach

(*o*) Circulars as to Provisional Orders were issued to town councils, to urban district councils and to rural district councils. The one printed is that addressed to town councils: words italicised do not appear in those addressed to district councils, and in the case of rural councils the paragraph as to gas orders is also omitted.

to procedure by Provisional Order as compared with procedure by private Bill is the opportunity of saving expense which the former affords. This advantage is largely discounted if, instead of conducting their case at a local inquiry with the assistance of their officers, who are usually perfectly capable of placing the facts before the Board's inspector, local authorities employ a number of counsel for the purpose. The Board recognise that there may be cases in which the employment of counsel by local authorities to appear at the inquiry is desirable, but such cases are exceptional, and where they arise, the Board consider that with a view to the saving of expense the number of counsel employed should be as small as possible. The very large expenditure which has, in some recent instances, been incurred in connection with local inquiries makes it necessary for the Board to emphasise this point.

I am, Sir, your obedient servant,

H. C. MONRO, *Secretary.*

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER SECTIONS 176 AND 279 OF THE PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. c. 55).

APPLICATIONS FOR PROVISIONAL ORDERS TO PUT IN FORCE COMPULSORY POWERS OF THE LANDS CLAUSES ACTS, UNDER SECTION 176 OF THE PUBLIC HEALTH ACT.

1.—(a) The application must be made by a petition under the seal of the local authority, containing the particulars required by section 176 (3) of the Public Health Act, 1875. In case of a rural district council it is not necessary (unless special circumstances would lead to saving of expense) that a separate application be made or separate proceedings be taken as regards each contributory place affected by the proposals. The lands proposed to be purchased should be specified in the petition *by inserting therein before the prayer of the petition an exact copy of the book of reference mentioned in instruction 4, amended, if necessary, so as to show by alterations in manuscript any changes or corrections ascertained between the preparation of the reference and the sealing of the petition.*

(b) Where it is only intended to carry sewers into, through, or under lands, such lands should not be included in the petition, as the local authority are empowered by section 16 of the Public Health Act to carry sewers into, through, or under lands without purchasing the lands. See also section 54 as to water mains.

2. The petition must be presented not later that the 31st October if the advertisements of the proposal were published in September, not later than the 30th November if they were published in October, and not later than the 18th December if they were published in November.

3.—(a) *Attention is drawn to the provision in section* 176 *of the Public Health Act,* 1875, *which empowers local authorities to give in the months of September and October, or of October and November, the advertisements and notices which are required before they can apply for a Provisional Order to enable them to obtain lands by compulsory purchase. The local authority should avail themselves of this power as far as practicable, so that the petition may be presented at an earlier date, and so as to prevent the possible loss of a parliamentary session in the event of errors being discovered too late to be remedied.*

(b) The Board have found that in some instances a misapprehension has prevailed as to the period within which the advertisements and notices prescribed in section 176 of the Public Health Act must be given. The section provides that the *advertisements* shall be published during three consecutive weeks in the months of September, October, or November, and it is necessary that the three weeks in which the publication takes place should all be included in the same month, whichever of those above-mentioned is selected for the purpose. Moreover, the advertisements must be published in the same newspaper each week, and the *notices* to the owners, lessees, and occupiers of

Appendix II. the lands which it is proposed to purchase must in all cases be served in the month immediately following that in which the advertisements are published.

(c) The Board also have found that in some cases the deposit of the plan of the proposed undertaking at the place to be named in the advertisement referred to in section 176 (2) (hereinafter referred to as the "deposited plan") has not been made until after the advertisement has been published; but the deposit should always be made at such time as to enable the deposited plan (and sections, if any) to be seen at all reasonable hours at the prescribed place so soon as the first advertisement appears. The plan should be marked "deposited plan" when deposited, and should (together with the sections if any) remain open to inspection at all reasonable hours from the date of the deposit until the time when it is sent to the Board with the petition in accordance with instruction 4 (b). When the deposited plan (and sections, if any) are returned by the Board, they should be re-deposited and remain at the prescribed place and be open to inspection at all reasonable hours until the Bill to confirm the Provisional Order, if an Order is issued, has received the royal assent.

4.—(a) As regards the deposited plan and the book of reference, the following directions must be strictly complied with:—

(i.) The deposited plan, which should be carefully corrected *on the ground*, should show not only the lands to be purchased, and the parish in which they are situated, but also the manner in which those lands will be utilized for the purposes in view, and the position, as nearly as practicable, of any buildings, tanks, reservoirs, or other works to be erected or constructed on the lands. The position in relation to the lands of any sewers, pipes, or other works, which may be contemplated as part of the undertaking for which the lands are required, should also be shown. In the case of land required for making a new street or for widening a street, the frontage line of the new street, or of the street when widened, should be shown by a hard line of colour; and the deposited plan should be accompanied by sections showing the proposed level of the new street in relation to the adjoining lands and to any existing streets which will communicate with the new street, and showing any alteration in the levels of the streets to be widened or altered, so far as it affects lands in that street or the communication with any existing streets. In the case of any street proposed to be widened, the deposited plan should be figured so as to show the widths at all material points of the existing street, and of the street as proposed to be widened. Any tramway in such street should be accurately indicated on the plan, and the space at material points between the outer lines of the tramway and the footpath on each side of the road, both before and after the contemplated improvements, should be given.

(ii.) The deposited plan should be coloured so as to distinguish the lands proposed to be actually purchased, and each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundaries of each parcel being defined by hard lines, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies.

(iii.) The book of reference should also be prepared, *on the ground*, at the same time as, and in conjunction with, the deposited plan; it should show the parish in which the lands are situate, each parcel of land being numbered to correspond with the deposited plan, and being described so as to show clearly what properties are covered by each number. (See instruction 1 (a)).

(iv.) A copy of the book of reference should be placed with the deposited plan at the time of deposit, for local inspection.

(b) The petition should be accompanied by a copy of the deposited plan (and sections, if any), or of so much thereof as relates to the petition, and by a book of reference (in duplicate), altered (if necessary) to correspond to the copy included in the petition in accordance with instruction 1 (a). The

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deposited plan (and sections, if any) should also accompany the petition for comparison with the copy and when returned by the Board should be re-deposited in accordance with instruction 3 (c).

(c) The deposited plan (and sections, if any) and the copy thereof, if not in book form, should be mounted on linen.

5.—(a) A statutory declaration specifying the manner in which the notices under section 176 were served upon the owners, lessees, and occupiers, and the names of the persons so served, should be made by the person who served them, and the service must be effected strictly in accordance with one of the modes prescribed by section 267 of the Act. The service should be effected by a responsible person. In the event of difficulty arising in ascertaining the actual interests of several owners, lessees, or occupiers where the boundaries between lands are not well or clearly defined, and the interests may overlap, it would be well to describe the lands as belonging to all the parties who claim or who are believed to have an interest in the lands, and to serve the notices accordingly, so as to avoid possible objection to the lands being taken on the ground of want of due notice.

(b) A statutory declaration should also be made by the clerk to the local authority, showing that all the other requirements of section 176 and of these instructions have been duly complied with, and the following exhibits should be annexed, viz. :—(1) Copies of the newspapers containing the advertisements ; (2) a copy of the form of notice served upon owners, lessees, and occupiers ; and (3) a statement showing with reference to the numbers of the deposited plan, the several parcels of land in respect of which notice was served upon each owner, lessee, and occupier, and what reply, if any, has been received from the owner, lessee, and occupier in respect of each parcel of land.

6. In the case of land required for widening a street, the fact that the street is repairable by the inhabitants at large should be stated in the petition.

7. The declaration or declarations should be sent to the Board with the petition.

8. Standing Orders 38 and 39 of both Houses of Parliament, extracts from which are appended, must be complied with, and immediately after the last of the deposits required by the Standing Order has been made, the Board should be furnished with an *affidavit* for production to the examiners of Standing Orders, in proof that the requirements of the Standing Orders referred to have been complied with. This affidavit must state definitely that the plans, sections, books of reference or maps deposited at the Private Bill Office and at the office of the Clerk of the Parliaments respectively in compliance with Standing Orders 39 above referred to, are in accordance with those Orders *duplicates* of those deposited with the Board.

9. Where the taking of the land will not involve the acquisition of any house or houses occupied, either wholly or partially, by thirty or more persons of the working class, whether as tenants or lodgers, this fact should be stated in the *affidavit*, so as to show that the Standing Order does not apply.

10. Every statutory declaration and affidavit must be made or sworn before a justice of the peace or a commissioner for oaths, and must be stamped with a half-crown *impressed* stamp ; and each exhibit to a statutory declaration or affidavit must be marked by the declarant or deponent and by the justice of the peace or commissioner for oaths, as the case may be, in the usual way.

11. Two or more local authorities cannot jointly petition for a Provisional Order to enable them to put in force the compulsory powers of the Lands Clauses Acts. Either each local authority must present a separate petition in respect of the particular lands which they require, or else the several local authorities must combine under section 285 of the Public Health Act, 1875, for the purpose of carrying the proposed scheme into execution, and a petition must be presented by one of them with regard to all the land required. If the latter course is taken, an agreement under the section should be entered into before application is made for the Provisional Order, and a copy of the agreement should accompany the application.

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12. If the local authority intend to apply for a Provisional Order to enable them to purchase lands compulsorily in connection with proposed works of sewerage or water supply, some of which will lie outside their district, they will probably find it convenient to satisfy the requirements of section 32 or section 54 of the Public Health Act when they are taking the necessary proceedings for the Provisional Order; but the advertisements and notices under those sections and the proof of compliance with the statutory provisions should be distinct from the advertisements, notices and proofs under section 176 of the Act. If this course is adopted it may have the effect of preventing delay at a subsequent stage of the proceedings in cases where advertisements and notices under section 32 or section 54 have to be issued before the works for which the land is required can be commenced. Section 53 should also be complied with, where it is intended to construct a reservoir to hold more than 100,000 gallons of water.

APPLICATIONS FOR PROVISIONAL ORDERS FOR THE CONSTITUTION OF UNITED DISTRICTS UNDER SECTION 279 OF THE PUBLIC HEALTH ACT, 1875.

1. It is desirable that the local authority of each of the districts proposed to be formed into a united district should concur by resolution in the application. The resolution should specify the purposes for which the united district is to be constituted and the basis upon which the representation on the joint board and the contributions to the common fund by the constituent authorities are proposed to be settled. A copy of the resolution, certified by the clerk, should be forwarded to the Board, together with a copy of any agreement to combine which may have been executed.

2. The application should be made not later than the 18th December next, and it is desirable that it should be sent in before that date if possible.

EXTRACTS FROM STANDING ORDERS.

STANDING ORDER 38 (HOUSE OF COMMONS).

"Where any Bill contains or revives or extends power to take compulsorily or by agreement any land in any local area as defined for the purposes of this Order, and such taking involves or may involve the taking in that area of any house or houses occupied either wholly or partially by thirty or more persons of the working class, whether as tenants or lodgers, the promoters shall deposit in the *Private Bill Office* § and at the office of the central authority on or before the 21st day of December, a statement giving the description and postal address of each of such houses, its number on the deposited plans, the parish in which it is situate, and the number (so far as can be ascertained) of persons of the working class residing in it, and also a copy of so much of the deposited plans (if any) as relates thereto.

"This Order shall not apply where a statement in pursuance of this Order was deposited in respect of the Act, the powers of which are proposed to be revived or extended.

"For the purposes of this Order the expression 'local area' means—as respects London, the administrative county of London, as respects England and Wales (outside London) any borough, or other urban district, and elsewhere than in a borough or other urban district, any parish; . . .

"The expression 'house' means any house or part of a house occupied as a separate dwelling.

"The expression 'working class' means mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income in any case does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them.

"The expression 'central authority' means, as regards England and Wales, the Local Government Board . .

"The expression 'Bill' includes a Bill confirming a Provisional Order."

§ In Standing Order 38 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

STANDING ORDER 39 (HOUSE OF COMMONS).

"Whenever plans, sections, books of reference or maps are deposited in the case of a Provisional Order . . . proposed to be made by any public department or county council, duplicates of the said documents shall also be deposited in the *Private Bill Office* * : provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November."

* In Standing Order 39 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

N.B.—It is particularly requested that the petition, declaration, affidavit, notices, and other documents may be on foolscap paper of the usual size, and that whenever more than two copies of any of these documents are required for use such documents may be printed so as to facilitate examination.

H. C. MONRO, *Secretary*.

Local Government Board, Whitehall,
1*st September*, 1913.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER SECTIONS 297 AND 303 OF THE PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. C. 55).

REPEAL, ALTERATION, OR AMENDMENT OF LOCAL ACTS OR CONFIRMING ACTS.

1. The application should be made by a resolution of the local authority, asking the Board in general terms to repeal, alter, or amend the Act, wholly or partially, as the case may require, and setting out the objects desired to be attained, and a copy of the resolution, certified by the clerk, should be forwarded to the Board. The resolution should be sufficiently wide in its terms to cover any provisions incidental to or consequential upon the main objects of the application which may, in the course of the consideration of the case by the Board, prove to be required. It is suggested that the resolution might, as a general rule, be in a form to the following effect :—

Resolved that the make application to the Local Government Board for the issue of a Provisional Order under sections 297 and 303 of the Public Health Act, 1875, to partially repeal, alter or amend the Act so as :—

(1) To
(2) To
(3) For the several purposes of this application, or for purposes connected with, incidental to or consequent on those purposes to make any such alteration or amendment of the said local Act or of any other local Act, or of any Act confirming a Provisional Order made in pursuance of any of the Sanitary Acts or of the Public Health Act, 1875, and in force in the said [borough] [district] as may be necessary or desirable.

2. The application must be received by the Board not later than the 15th November next, and it is very desirable that it should be sent in before the 1st October next.

3. The application should be accompanied by a king's printer's copy of the Act, and by a statement showing the particular provisions which it is proposed should be repealed, altered or amended, the precise alterations desired, and any provisions which will require consequential alteration ; and in the event of the local Act having been previously altered by Provisional Order or local Act, a reference to such Order or Act should be given. The statement should also show clearly the grounds upon which each of the proposed amendments is desired.

4. In any case in which powers are sought which deviate from, are in extension of, or are repugnant to the general law, the statement should show the circumstances peculiar to the locality which are alleged to justify the grant

Appendix II. of the powers, and should contain a reference to any recent precedents for the grant of such powers.

5. If the powers sought can be obtained under a general Act, the reasons for not proceeding under the provisions of the general law should be fully set out in the statement.

6. If additional borrowing powers are sought, the purposes for which the powers are required should be stated, and in cases in which actual works have been decided on for which a loan will be required, estimates should be furnished showing as far as practicable the amounts required for each purpose, together with plans and sections of the works. References should also be given to the provisions of the Acts under which the local authority claim to have power to carry out the purposes for which the borrowing powers are sought.

Where the application relates to borrowing powers for the purposes of a gas undertaking and the limits of the local authority for the supply of gas extend beyond their district, a definite maximum amount of such borrowing powers, which should not exceed the sum estimated to be required for capital purposes of the undertaking within a period of twenty years, must be specified for insertion in the Provisional Order.

7. If power is sought for the acquisition or use of any land for the manufacture or storage of gas, a concise description of such land should be furnished, together with a map on a scale of not less than six inches to the mile showing clearly the position of the land, and a statement of the number of houses situate within 300 yards of the limits of such land.

8. If, in any other case, the application proposes to confer the power to acquire any land or relates to an area which is described by reference to a map or plan, the map or plan must be on a scale of not less than six inches to the mile and must accompany the application.

9. In all cases in which plans, etc., are deposited, Standing Order 39 of each House of Parliament must be complied with.

10. In the case of any proposal to acquire land, Standing Order 38 must also be complied with, and an *affidavit* must be supplied for production to the examiner of Standing Orders, in proof that the requirements of those Standing Orders have been complied with, or that Standing Order 38 does not apply, as the case may be. This affidavit must be sworn before a justice of the peace or a commissioner for oaths, and stamped with a half-crown *impressed* stamp, and must state definitely that the plans, sections, books of reference or maps deposited at the Private Bill Office and at the office of the Clerk of the Parliaments respectively, in compliance with Standing Orders 39 above referred to, are, in accordance with those Orders, *duplicates* of those deposited with the Board.

EXTRACTS FROM STANDING ORDERS.

STANDING ORDER 38 (HOUSE OF COMMONS).

[*For the terms of this Order, see* ante, *p.* 2502.]

STANDING ORDER 39 (HOUSE OF COMMONS).

"Whenever plans, sections, books of reference or maps are deposited in the case of a Provisional Order . . . proposed to be made by any public department or county council, duplicates of the said documents shall also be deposited in the *Private Bill Office* *: provided with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November."

* In Standing Order 39 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

N.B.—It is particularly requested that all applications and statements may be on foolscap paper of the usual size.

H. C. MONRO, *Secretary*.

Local Government Board, Whitehall,
1*st September*, 1913.

Appendix II.

INSTRUCTIONS AS TO REPRESENTATIONS BY TOWN COUNCILS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER SECTION 54 OF THE LOCAL GOVERNMENT ACT, 1888, WITH RESPECT TO THE ALTERATION OF THE BOUNDARIES OF BOROUGHS.

1. The representation should be embodied in a memorial of the town council under their corporate seal, and should be printed on paper of foolscap size, and on one side only of the paper. The representation must be made to the Board at the earliest date practicable, and not later than the 1st December next.

2. The memorial (of which six copies should be sent to the Board) should specify, with reference to a map, the particular alterations desired, and should state in detail the reasons upon which the town council rely in support of their representation. The town council should also embody in their memorial, in every case in which it is sought to include in the borough a rural parish or a part of a rural parish, proposals in conformity with the provisions of section 54 of the Local Government Act, 1894.

The memorial should embody definite proposals as regards the following matters:—(a) The mode in which the areas sought to be included in the borough and the parts of parishes (if any) which will remain outside should be dealt with for parochial purposes; (b) the continuance, alteration, dissolution or constitution of parish councils in respect of the rural areas (if any) which will remain outside the borough; (c) the number of guardians or rural district councillors, as the case may be, at present elected for each parish or ward of a parish affected within and without the borough, and the number to be elected for each parish or ward of a parish as proposed to be altered; and (d) in the case of urban parishes affected, it should be stated by whom the appointment of overseers is made.

3. The map accompanying the memorial to the Board should be an ordnance map, mounted on linen and folded in book form, on the scale of not less than six inches to the mile, and should be coloured and annotated so as to show clearly (a) the existing boundary of the borough, (b) the alteration of boundary proposed by the representation, and (c) the *entire* boundaries of any urban districts, and of any contributory places in rural districts which will be affected by the proposal. The map should moreover indicate by some distinctive colouring the positions in the borough, and in any other area affected by the representation, of all churchyards and burial grounds (whether provided under the Burial Acts, the Public Health (Interments) Act, 1879, or under any local Act), of tramways, public elementary schools, police stations, and recreation grounds, and also of any buildings which have been erected since the date when the ordnance map was issued. The sites of sewage disposal works, refuse destructors or tips, gas works, electric generating stations, and waterworks should also be indicated by distinguishing letters or other characters; and a reference table showing what is indicated by the various colours and other signs used should be attached to the map.

4.—(a) Where a borough is divided into wards, and it is proposed, as consequential upon the alteration of the borough boundary, to increase or decrease the number of the wards or to alter the boundaries of any wards, an additional ordnance map (also mounted on linen and folded in book form, and on the scale of not less than six inches to the mile) should be coloured and annotated so as to show clearly the present boundaries of and the apportionment of councillors among the existing wards, and the proposed alterations as regards wards and their boundaries, and the proposed apportionment of councillors.

(b) A similar map should be supplied in every case in which a representation in favour of the alteration of the boundary of a borough not divided into wards comprises also a proposal for the division of the borough into wards.

(c) The maps referred to in the above instructions should accompany the memorial to the Board.

(d) Where a borough is not divided into wards, and it is not proposed, as consequential upon the alteration of the borough boundary, to divide it into wards, this should be stated in the memorial.

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5. A duplicate of each of the maps referred to in instructions 3 and 4 must, simultaneously with the transmission of the memorial to the Board, be deposited in the town clerk's office and be open to inspection without payment at all reasonable hours by any local authority or person affected by the proposal. Notice in writing of such deposit should, at the same time, be given to each local authority interested, and such deposit should also be advertised in some one and the same local newspaper circulating in the areas affected by the proposal in two successive weeks, and the first advertisement should appear within seven days after such deposit. A copy of the map referred to in instruction 3 should, at the time of transmitting the memorial to the Board, be sent to the Board of Agriculture and Fisheries, St. James's Square, London, S.W.

6. Copies of the memorial must be forwarded to the Board of Agriculture and Fisheries and to the several local authorities (including the county council) having jurisdiction within the areas affected by the scheme, and a copy of the map referred to in instruction 3 should accompany the copy of the memorial which is sent to the county council.

7. A statutory declaration should, as soon as practicable, be furnished by the town clerk, that the requirements of instructions 5 and 6 have been complied with. The town clerk must also certify that he has personally verified by every means in his power and, if necessary, by inquiries at the Ordnance Survey Office, Privy Council Office, and elsewhere, the accuracy of the existing boundaries of the borough as shown on the map. The town clerk will be examined with reference to this matter by the inspector at any local inquiry which may be held in reference to the application. The certificate should enumerate the several local authorities to whom the notices mentioned in instruction 5 have been given.

8. An application to the Board in accordance with these instructions being an application within the scope of Standing Order 39 of each House of Parliament, the requirements of that Order (see extract appended) must be satisfied.

9. The Board should, immediately after the deposit required by the Standing Order has been made, be furnished with an *affidavit* (stamped with a half-crown *impressed* stamp, and sworn before a justice of the peace or a commissioner for oaths) for production to the examiners of Standing Orders in proof that the requirements of the Standing Order have been complied with. This affidavit must state definitely that the maps deposited at the Private Bill Office and at the office of the Clerk of the Parliaments respectively, in compliance with Standing Orders 39 above referred to, are in accordance with those Orders *duplicates* of those deposited with the Board.

10. The Board will require to be furnished with additional information in connection with representations such as those to which the foregoing instructions relate. The matters to which this information should extend are detailed in a separate series of supplemental instructions (Provisional Order Instructions C (A)).

EXTRACT FROM STANDING ORDER 39.

STANDING ORDER 39 (HOUSE OF COMMONS).

[*For the terms of this Order, see* ante, *p.* 2504].

H. C. MONRO, *Secretary.*

Local Government Board, Whitehall,
1*st September*, 1913.

Appendix II.

SUPPLEMENTAL INSTRUCTIONS AS TO REPRESENTATIONS BY TOWN COUNCILS TO THE LOCAL GOVERNMENT BOARD UNDER SECTION 54 OF THE LOCAL GOVERNMENT ACT, 1888, FOR THE ALTERATION OF BOROUGH BOUNDARIES.

In connection with any representation which may be made to the Board under section 54 (1) (a) of the Local Government Act, 1888, in favour of an alteration of the boundary of a borough, it is necessary that they should be furnished with carefully compiled statements giving the information hereinafter indicated :—

I. *Area and Population.*

(a) Of the borough according to the census of 1901 and of 1911 ; and
(b) Of the borough at the date of the memorial.

II. *Rateable Value and Rates Levied.*

Particulars as to the rateable value and assessable value of the borough in 1901, and at the date of the memorial, and information as to the amount in the £, purpose, and nature of each rate levied in the borough during each of the three financial years immediately preceding the date of the memorial.

III. *Property.*

Particulars as to the property belonging at the date of the memorial to the corporation acting by the council—

(a) As the municipal authority, or as an authority under any general or local Act for purposes other than sanitary purposes ; and
(b) As the urban authority or district council, or as an authority under any general or local Act for sanitary purposes.

In these statements moneys arising direct y from the levy of rates or moneys invested for, or applicable to, the discharge of loans need not be specified ; but the statements should give, in as concise a form as possible, information as to the description, situation, extent, value, income, authority for acquisition, and nature of tenure of the property.

IV. *Debts.*

Particulars as to the amount, purpose, date of borrowing, authority for borrowing, method of repayment, &c., of the several loans, wholly or in part outstanding at the date of the memorial and contracted by the corporation acting by the council—

(a) As the municipal authority, or as an authority under any general or local Act for purposes other than sanitary purposes ; and
(b) As the urban authority or district council, or as an authority under any general or local Act for sanitary purposes.

It should be stated whether any of the loans have been advanced by the Public Works Loan Commissioners, and any loan so advanced should be distinguished in the statement.

V. *Burial Boards.*

The statement under this head should specify whether the town council are a burial board, and, if so, under what authority, and whether their area of jurisdiction as such burial board is co-extensive and conterminous with the entire area of the borough.

If their area of jurisdiction as the burial board is not co-extensive and conterminous with the entire area of the borough, the precise contents and boundaries of such area of jurisdiction should be stated.

As regards any part of the borough which is not within the area of jurisdiction of the town council as a burial board, information should be supplied

Appendix II. as to whether such part is within the area of jurisdiction of any other burial board or of a joint committee acting under section 53 (2) of the Local Government Act, 1894. If so, the precise contents and boundaries of the area of jurisdiction of such last-mentioned burial board or joint committee and the contents and boundaries of such part should be stated. Where such burial board is a joint burial board, the names of the contributory boards should be mentioned.

Where the town council are not a burial board, and a burial board have jurisdiction in the borough, a statement as to the loans contracted by such burial board and remaining wholly or in part outstanding at the date of the memorial should be given.

VI. *Education.*

The statement under this head should show :—

(1) The name of the local education authority,

(a) for purposes of Part II. of the Education Act, 1902,

(b) ,, Part III. ,,

and the date or dates on which the Act came into operation in the borough for such purposes.

(2) Details as to debt and any agreements, financial or otherwise, which may have been entered into by the authority. Copies of any such agreements should be forwarded.

The Board should also be furnished with a copy of the scheme for establishing an education committee under section 17 (1) of the Act, unless, in the case of a council having powers under Part II. only of the Act, it has been determined that such committee is unnecessary.

VII. *Combinations and Agreements.*

Copies of all agreements which may have been entered into by the town council as the urban authority or district council with any adjoining authority under such enactments as sections 28, 61, 131, and 285 of the Public Health Act, 1875, should be furnished, together with information as to what combinations (if any) have been effected under such enactments as sections 191 and 286 of the Public Health Act, 1875, and if any agreements have been entered into in accordance with provisions contained in local Acts, copies thereof, together with the local Acts under which they were made, should be forwarded to the Board.

VIII. *Joint Boards and Port Sanitary Authorities.*

The statement should show whether the borough is included in a united district for any sanitary purpose, and should give a reference to the Order or Act forming the united district.

The statement should also specify, in cases where the borough, or any part thereof, forms part of or abuts on any part of a port or the waters of such port, whether a port sanitary authority has been constituted for such port or any part thereof or for two or more ports including such port, and should give a reference to the Order constituting the port sanitary authority.

IX. *Adoptive Acts.*

The statement under this head should show whether the under-mentioned Acts (or any parts thereof) have been adopted in the borough :—

The Infectious Disease (Prevention) Act, 1890,
The Public Health Acts Amendment Act, 1890,
The Museums and Gymnasiums Act, 1891,
The Public Libraries Acts,
The Baths and Washhouses Acts,
The Private Street Works Act, 1892,
The Notification of Births Act, 1907.

X. *Added Areas.*

As regards each of the urban districts and contributory places or parts of such districts and places proposed to be included in the borough, the Board should be furnished with similar information to that indicated under the foregoing heads I. to IX.

The further information indicated below should also be furnished in every case in which it is proposed to include a rural parish or part of a rural parish in a borough :—

(a) What are the present arrangements as regards highways, and what arrangements are proposed ;

(b) Whether, in addition to the Acts cited under head IX., any of the following Acts have been adopted :—

The Lighting and Watching Act, 1833.
The Burial Acts, 1852 to 1885.
The Public Improvements Act, 1860.

In every case in which an Act has been adopted for part only of a parish the precise area and date of adoption, and the name of the authority for the execution of the Act should be specified.

XI. *Previous Proposals for Extension.*

The Board should be informed whether any unsuccessful applications have been previously made to Parliament or to the Board for the inclusion in the borough of the areas now sought to be annexed or any part of them, and, if so, they should be furnished with full particulars as to any such application, and, as regards any application made to Parliament, with a copy of the Bill embodying the proposal, together with a print of the minutes of evidence given before the committee to which the Bill was referred.

XII. *Appendix.*

An appendix of documents and miscellaneous information should also be forwarded with the memorial.

As examples of documents which should invariably be found in the appendix may be mentioned :—

A copy of each charter in force in the borough ;

A copy of each agreement between the local authorities to which reference is made in the statements under heads VI. and VII. ;

A copy of every local Act and of every Act confirming a Provisional Order in force in the borough and in any areas proposed to be added ;

A copy of the list of electoral divisions of the county, with the area and population of each division correctly inserted ;

A copy of each Order made by the county council or by a joint committee under the Local Government Act, 1894, affecting the areas proposed to be included in the borough ;

A list of the petty sessional divisions of the county, with a statement of the contents and boundaries of each such division which may comprise any area affected by the proposal ; .. ..

A similar list and statement of the coroner's districts ;

A copy of the last printed abstract of the borough treasurer's accounts ;

A statement showing, as regards all works in any area proposed to be added to the borough, the actual cost of, and the outstanding liability in respect of, each of such works ;

A statement showing the powers which have been conferred by Orders of the Board upon the town council, or upon the council of any urban district proposed to be affected, under section 33 of the Local Government Act, 1894, and a reference to such Orders ; and

A statement showing the powers which have been conferred by Orders of the Board or of the Secretary of State upon the town council, or upon the council of any district proposed to be affected, under section 2 (2) of the Public Health Acts Amendment Act, 1907, and a reference to such Orders.

Appendix II.

In any case in which the town council may consider it expedient to submit proposals for the alteration of any local Act in force in any area affected by the representation, a detailed statement of the amendments desired should be forwarded, together with a print of the local Act in question ; and in any case where, if the boundary of a borough be altered, it may be necessary or expedient to repeal or extend the provisions of any local Act which relate to rates, assessments or other pecuniary liabilities, or to exemptions from rates, assessments or other pecuniary liabilities, or to clauses for the protection of parties other than the town council, special attention should be directed to such provisions . . . and the mode in which it is proposed that they should be dealt with should be specified.

H. C. MONRO, *Secretary.*

Local Government Board, Whitehall,
1*st September*, 1913.

GAS AND WATER WORKS FACILITIES ACT, 1870, AND GAS AND WATER WORKS FACILITIES ACT, 1870, AMENDMENT ACT, 1873—GENERAL ORDER.

(September 7th, 1891.)

TO THE URBAN SANITARY AUTHORITIES for the Urban Sanitary Districts in England and Wales and to all others whom it may concern :

WHEREAS [*here are recited in part sections* 5, 6, *and Schedule B., Part II., of the Act of* 1870, *section* 14 *of the Act of* 1873, *section* 161 *of the P. H. A.*, 1875, *and previous Orders of October* 26*th*, 1877, *and November* 1*st*, 1877].

And whereas it is expedient that further provision in the matter should be made as hereinafter mentioned :

Now, therefore, in pursuance of the above-cited provisions, and by virtue of the several other authorities enabling us in this behalf, we hereby rescind the said Orders dated respectively the twenty-sixth day of October, one thousand eight hundred and seventy-seven, and the first day of November, one thousand eight hundred and seventy-seven, and in lieu thereof we do hereby make the following regulations and rules :

1. The notice in writing and the notice by advertisement required to be given by sub-sections (1) and (2) of section 5 of the Gas and Water Works Facilities Act, 1870, must state that every company, corporation, or person referred to therein, or any other person desirous of bringing before the Local Government Board any objection respecting the application of the urban sanitary authority for a Provisional Order, may do so by letter addressed to the secretary of the said Board, to be lodged with the said Board on or before the fifteenth day of January next ensuing the making of such application, and that a copy of such objection must, at the same time, be sent to the clerk to such urban sanitary authority.

2. The map required to be deposited on or before the thirtieth day of November, by Schedule B., Part II., of the said Act, must be on a scale not less than six inches to the mile, and must show distinctly the situation of the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas, in relation to the adjoining lands and premises and to the urban sanitary district generally. The plan and section of any proposed new works required to be deposited on or before the day aforesaid by the said part of the said schedule must be on a scale of not less than one inch to fifty feet, and must, as far as practicable, show the general arrangement, elevation, and character of the proposed works.

In any case where any part of the works would be situate on lands where the ordinary spring tide flows, the site of such lands must be coloured blue on the map and plan. A copy of such map and plan, coloured in like manner, and marked "tidal waters," shall be deposited at the Board of Trade on or before the date last aforesaid.

3. Where the application is for an extension of gas works, a map or plan of the existing gas works on a scale of not less than six inches to the mile must accompany the memorial to be deposited with the Local Government Board.

4.—(i.) The draft of the Provisional Order required to be deposited with the Local Government Board on or before the twenty-third day of December must be on foolscap paper, and printed or lithographed on one side only.

(ii.) The name of the urban sanitary authority, together with the name and address of the clerk to such authority, must be shown on the back of the last page of every such draft Provisional Order, which must contain a notice at the end of it, stating that any objections are to be sent to the Local Government Board in the manner aforesaid.

(iii.) Three copies of the draft Order must be deposited with the Local Government Board.

5. The urban sanitary authority must prove compliance with the provisions of—

(i.) The Gas and Water Works Facilities Act, 1870, section 5, sub-section (1);
(ii.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part I., paragraphs (3) and (4);
(iii.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part II., paragraph (2);
(iv.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part III., paragraph (2);
(v.) This Order;

by an affidavit or statutory declaration to be made by the clerk or some other officer of the urban sanitary authority, and to be deposited with the Local Government Board on or before the first day of January next ensuing the making of the application.

Copies of the notices, together with copies of the newspapers and London Gazette containing the notice by advertisement, and the receipt of the clerk of the peace (if any) for the documents deposited with him, must be annexed to the affidavit or declaration as exhibits.

Such affidavit or declaration must also state that there is not any company or person authorised by or in pursuance of any Act of Parliament, or any Order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such urban sanitary authority, or within the part of the district which the urban sanitary authority propose to supply, as the case may be.

6. On or before the first day of January there must be deposited with the Local Government Board an affidavit, showing that the requirements of the Standing Orders of both Houses of Parliament have been complied with, as regards the deposit with the Clerk of the Parliaments and at the Private Bill Office of duplicates of every map, plan, section, and book of reference deposited with the Local Government Board, and as regards the deposit with the Board of Trade of the copy of the map and plan before referred to. The affidavit must be sworn by the clerk or some other officer of the urban sanitary authority and by the person by whom the deposits were made.

7. Any objection to an application by an urban sanitary authority for a Provisional Order as aforesaid must be lodged with the Local Government Board on or before the fifteenth day of January next ensuing the making of the application by the urban sanitary authority.

8. Every memorial, objection, and other such document deposited or lodged with the Local Government Board must be on foolscap paper.

9. When an objection is lodged with the Local Government Board, the objector or his agent must state that he has at the same time forwarded a copy of such objection to the urban sanitary authority.

10. When a Provisional Order has been issued by the Local Government Board the urban sanitary authority must, within fourteen days after the day on which the same shall have been sent to them by the Local Government Board, transmit to the said Board an affidavit or statutory declaration, made by the clerk or some other officer of the urban sanitary authority, proving that the Provisional Order was published on or before the twenty-fifth day of April, in conformity with paragraph 3 of Schedule D., Part IV., of the Gas and Water Works Facilities Act, 1870, and that paragraphs 1 and 2 of the said part of that schedule have been complied with.

The receipt of the clerk of the peace (if any) for the copies of the Provisional

Appendix II. Order deposited with him, and copies of the Provisional Order and of the newspaper containing the advertisement of such Order, must be annexed to the affidavit or declaration as exhibits.

11. Every statutory declaration and affidavit under these regulations and rules must be made out or sworn before a justice of the peace or a commissioner for oaths, and must be duly stamped.

Given under the Seal of Office of the Local Government Board, this seventh day of September, in the year one thousand eight hundred and ninety-one.

(L.S.) HENRY MATTHEWS,

One of the ex-officio Members of the Local Government Board.

S. B. PROVIS, *Assistant Secretary.*

RAG FLOCK REGULATIONS.

See *ante*, p. 2141.

ROAD BOARD.

See DEVELOPMENT, ETC., FUND, *ante*. p. 2282.

SCHOOLS.

CLOSING OF. See DISEASES, *ante*, p. 2283.

As to drainage and sanitary arrangements of schools reference may be made to a circular of the L. G. B. dated February, 1910.

SHOPS.

Reference may also be made to a memorandum on the Shops Acts, 1912 and 1913, and various circulars issued by the Home Office, together with the text of the Acts and Orders in the form of a booklet.

REGULATIONS UNDER THE SHOPS ACTS.

(April 1st, 1912.)

In pursuance of the powers conferred on me by the Shops Act, 1912, I hereby make the following regulations :—

I.

Notice to be given by Occupier as to Assistants' Weekly Half-holiday (*section* 1 (2)).

1. The notice required to be affixed in a shop specifying the day or days on which the shop assistants employed therein are not employed after half-past one o'clock shall be in the form marked I. in the schedule to these regulations.

2. The notice shall be kept constantly affixed in a position where it may be readily seen and read by any person whom it affects, and shall be renewed whenever it becomes defaced or otherwise ceases to be clearly legible.

If the half-holiday is given on different days to the assistants employed in different rooms or departments of a shop, a separate notice shall be affixed in each such room or department.

3. The notice shall be affixed before the assistants to whom it relates cease work on the Saturday preceding the week during which it is to have effect.

Inquiries by Local Authorities as to Orders fixing the Day on which Shops are to be closed for the Weekly Half-holiday (*section* 4 (2)).

4. Before the local authority make an order fixing the day of the weekly half-holiday for any class of shops, they shall take the following steps for ascertaining whether the occupiers of a majority of that class of shops approve the order :—

(1) They shall cause a register of the shops of that class to be prepared in the manner hereinafter provided.

(2) They shall give notice of their intention to make the order and of the times and place at which the register may be inspected by any shopkeeper affected, in the form marked II. in the schedule to these regulations. The notice shall either be advertised in at least two newspapers circulating in the area to which the order is to apply, or be posted up in streets and public places in the area to which the order is to apply, in such positions and in such manner that it is likely to be seen and can easily be read by persons interested.

(3) They shall take a vote of the occupiers of the shops of that class in the manner hereinafter provided or, if the local authority have received an application in writing purporting to be signed by the occupiers of a majority of the shops of that class, they may in lieu of taking a vote take such steps as they think fit to verify the signatures to the application, and signatures so verified shall, unless reason appear to the contrary, be taken to mean that the occupiers whose signatures they purport to be approve the order.

Provided that if shops of any class are required under a closing order in force before the 1st May, 1912, to close on a certain day of the week (other than Saturday) at one o'clock in the afternoon, it shall not be necessary to take a vote of the occupiers of those shops in respect of a proposal to make an order fixing that day as the day of the weekly half-holiday, unless representations are made to the local authority by a substantial proportion of the occupiers in favour of another day being fixed.

Conditions for Mixed Shops remaining open on Weekly Half-holiday (*section* 10 (1)).

5. Where any trade or business exempted from the provisions of the Act as to closing on the weekly half-holiday is carried on in the same shop with any trade or business not so exempted, the shop shall only be kept open for the purpose of the exempted trade or business on the day fixed for the weekly half-holiday in respect of the trade or business not exempted, on the following conditions :—(a) after the hour of closing on the day of the weekly half-holiday, whether fixed by the occupier or by an order made by the local authority under the Act, there shall be exhibited in some conspicuous places on the exterior and in the interior of the shop notices in letters of the size of not less than two inches in accordance with the form marked IV. in the schedule to these regulations ; (b) so far as reasonably practicable no goods in connection with the trade or business not exempted shall be exhibited either inside or outside the shop.

II.

Notice of Intention to make Closing Order.

6. As soon as may be after the local authority are satisfied that a *primâ facie* case is made out for making a closing order they shall cause a register to be prepared in the manner hereinafter provided.

Appendix II.

7.—(1) Notice of the intention of the local authority to make a closing order shall be given in the form marked A in the schedule to these regulations, and unless a copy of the proposed order be annexed to it, it shall specify the area within which and the class or classes of shops to which the order will apply and the proposed days and hours of closing. The notice shall

(i.) be advertised at least twice in a newspaper or newspapers circulating in the area to which the order is to apply ;

(ii.) be posted up in streets and public places in the area to which the order is to apply, in such positions and in such manner that it is likely to be seen and can easily be read by persons interested ; and

(iii.) be given to any ratepayer in the area making reasonable application for it.

If the order applies to an area with a population of not more than 5,000, the local authority may, in lieu of advertising the notice in a newspaper or newspapers, cause a copy to be sent to the occupier of every shop known to be affected by the order.

(2) If anything in the order affects Post Office business, a copy of the notice shall be sent to the Postmaster-General.

8. The prescribed period within which objections may be made to the proposed order shall be four weeks.

Ascertaining Opinion of Occupiers of Shops.

9. If the local authority, after considering any objections or suggestions received by them in pursuance of the notice of their intention to make an order, desire to proceed with the order, they shall, for the purpose of ascertaining whether the occupiers of at least two-thirds in number of the shops to be affected by the order approve the order, either take a vote in the manner hereinafter provided or, if they have received an application in writing for the making of the order, purporting to be signed by the occupiers of at least two-thirds in number of the shops to be affected by the order, they may in lieu of taking a vote take such steps as they think fit to verify the signatures to the application, and signatures so verified shall, unless reason appear to the contrary, be taken to mean that the occupiers whose signatures they purport to be approve the order.

Notice, &c., when Order submitted to Secretary of State.

10. When the local authority have made a closing order, a notice, in the form marked C in the schedule to these regulations, shall be given in the manner above prescribed for the notice of intention to make an order.

11. In submitting the order to the Secretary of State, the local authority shall inform him as to the method adopted by them for ascertaining the opinion of the occupiers of shops, and as to any matters which they think it desirable to bring to his notice, and shall forward to him copies of any notices given by them under these regulations and other evidence that the regulations have been duly complied with, verified by a certificate signed by their clerk.

Local Enquiries.

12. When the Secretary of State directs a local enquiry to be held with regard to a closing order it shall be held at such place as the local authority, with the approval of the Secretary of State, may appoint, and at such time as may be fixed by the person appointed by the Secretary of State to hold the enquiry (hereinafter called "the commissioner").

13. Not less than three weeks before the time of holding the enquiry notice thereof and of the place where the enquiry will be held shall be given in the manner above prescribed for the notice of intention to make an order.

14. The enquiry shall be held in public, and any person who, in the opinion of the commissioner, is affected by the closing order, may appear and be heard either in person, or by counsel, solicitor, or agent.

15. The commissioner may give such directions as he thinks fit as to the order in which the objections to the order shall be considered; and, if any person who has not sent objections in writing to the Secretary of State claims to be heard at the enquiry, may require him to state his objections in writing.

16. The commissioner may adjourn the enquiry from time to time as he thinks desirable.

17. If the objections to the order made by more than one person appearing at the enquiry seem to the commissioner to be the same in substance, he may select any person whom he considers representative of the largest number of the persons affected by the order, to state such objections, and to call evidence (if required); provided that any other person making the same objections may be heard subsequently with the consent of the commissioner.

18. Subject to the foregoing rules, all the proceedings shall be conducted in such manner as the commissioner may direct.

III.—GENERAL.

Preparation of Register.

19.—(1) A register to be prepared in pursuance of these regulations shall show the addresses, trades, and names of the occupiers of all the shops to be affected by the order.

In the case of a shop in which several trades or businesses are carried on, the local authority may require the occupier to specify, in pursuance of subsection (3) of section 10 of the Act, which trade or business he considers to be his principal trade or business, and the local authority shall not insert the name of the occupier in the register in respect of any other trade or business carried on in the shop unless the occupier satisfies them that it forms a substantial part of the business carried on in the shop.

(2) Every occupier of a shop to be affected shall be entitled to attend within the times and at the place specified in the notices required to be given by these regulations for the purpose of securing that the entries in the register with regard to his shop are duly made.

(3) Any occupier of a shop to be affected may represent to the local authority any matter, in regard to the register, which seems to him to require to be rectified; and the local authority shall consider all such representations.

The Taking of a Vote.

20. If a local authority decide, or are required, to take a vote for the purpose of ascertaining the opinion of the occupiers of shops to be affected by an order fixing the day of the weekly half-holiday or by a closing order, they shall proceed as follows:—

(1)—(a) A notice, together with a voting paper, in the form marked III. or in the form marked B in the schedule to these regulations, as the case may be, shall be sent by post or otherwise delivered to every occupier appearing in the register, at his registered address.

(b) Voting papers shall be returned to the local authority either through the post or by a collector appointed in writing by them for the purpose, and carrying with him at the time of collection his written appointment, which he shall show to any occupier who shall require it to be shown.

(c) A voting paper shall be deemed to be duly signed if signed by the occupier with his full name or with the ordinary signature used for the purpose of his business: provided that, if any occupier is unable to write, he may, in the presence of some other person, who shall explain the effect of the voting paper, attach his mark thereto, and such mark shall be attested by such other person, who shall append his signature and address.

(d) The local authority shall cause the voting papers, as soon as may be after the last day fixed for their return, to be scrutinised and compared with the register, and the numbers respectively of the votes for and against the order to be ascertained.

Appendix II.

Other Provisions as to making of Orders.

21. The making of an order shall not be frustrated nor the order invalidated by reason merely of any failure in the delivery of a notice or a voting paper to any person or to the local authority or of any other informality in complying with these regulations.

22. When an order fixing the day of the weekly half-holiday is made by the local authority, or a closing order is confirmed by the Secretary of State, the local authority shall forthwith either cause to be advertised once in a newspaper, and to be posted up in streets and public places, in the area to which the order applies a notice giving the terms of the order as made or confirmed, or shall send such notice to the occupier of every shop affected by the order.

Revocation of Orders.

23. Before revoking an order fixing the day of the weekly half-holiday or applying to the Secretary of State to revoke a closing order, the local authority shall, for the purpose of ascertaining whether the occupiers of a majority of each of the several classes of shops affected by the revocation approve the revocation, follow, with the necessary modifications, the same procedure as is prescribed in the foregoing regulations in regard to the making of such orders.

24. When an order is revoked in whole or in part by a local authority or by the Secretary of State, as the case may be, the local authority shall forthwith either cause to be advertised once in a newspaper, and to be posted up in streets and public places, in the area to which the order applied a notice announcing such revocation or shall send such a notice to the occupier of every shop known to be affected by the revocation.

Certificate of Appointment of Inspector.

25. The certificate of appointment with which an inspector is required to be furnished shall be in the form marked V. in the schedule to these regulations.

R. McKENNA,

One of His Majesty's Principal Secretaries of State.

Home Office,
1*st April*, 1912.

I.—PRESCRIBED FORM OF NOTICE AS TO ASSISTANTS' WEEKLY HALF-HOLIDAYS.

Shops Act, 1912, *section* 1.

Prescribed Form of Notice as to Assistants' Weekly Half-Holidays.

I HEREBY GIVE NOTICE that the assistants employed in this {shop / room / department}* will not be employed about the business of the shop after 1.30 p.m. on the day named below in the week following the date of this notice and until further notice.†

Names ‡ *or* Class *or* Department of Assistants.	Week-day on which Half-holiday is allowed.

Signature of occupier or manager,

Date.

* Strike out the words which are not appropriate.

† Strike out the words "and until further notice" if the notice is intended to apply only to one week.

‡ If the same day is fixed for all the assistants, the word "all" only need be inserted in this column.

Appendix II.

This notice must be kept constantly affixed in the shop in a position where it may be readily seen and read by any person whom it affects, and must be renewed whenever i becomes defaced or otherwise ceases to be clearly legible.

If the half-holiday is given on different days to the assistants employed in different rooms or departments of a shop, a separate notice must be affixed in each such room or department.

The notice must be affixed before the assistants to whom it relates cease work on the Saturday preceding the week during which it is to have effect.

II.—NOTICE OF INTENTION TO MAKE A HALF-HOLIDAY ORDER AND AS TO INSPECTION OF REGISTER.

Shops Act, 1912, *section* 4 (2).

NOTICE IS HEREBY GIVEN that the council [on application made to them] propose to make an order fixing the day of the weekly half-holiday for the trades hereinafter mentioned as follows :—

Name of Trade	Day of weekly half-holiday.
————	—— (or, at option of shopkeeper, Saturday) *or as the case may be*, Saturday (or, at option of shopkeeper——).

NOTICE IS FURTHER-GIVEN that the occupier of any shop to be affected by the order may, on presenting himself at [the council's offices] between the hours of and on [any] day before the [date] next, verify that his name, address and trade are duly entered in the register of shops, [and may inspect the application for the making of the order received by the council].

Dated this day of 19 .

Clerk to the Council.

III.—NOTICE FOR ASCERTAINING THE OPINION OF OCCUPIERS OF SHOPS ON PROPOSED ORDER BY TAKING A VOTE.

Shops Act, 1912, *section* 4 (2).

NOTICE IS HEREBY GIVEN that the council propose to make the order shown on the enclosed voting paper, provided they are satisfied that the occupiers of a majority of the shops to be affected by the order approve the order.

You are requested (i) to signify your opinion for or against the making of the order by writing "Yes" or "No" on the enclosed voting paper in the space provided for the purpose ; and (ii) to return the paper by post to the council at [the council's offices] before the day of 19 , [or to hand the paper to a collector appointed by the council for the purpose, who will call for it, and will show, on request, his written appointment] [or to hand the paper to the person delivering it].

Dated this day of 19 .

Clerk to the Council.

FORM OF VOTING PAPER (*to be enclosed with the foregoing notice*).

Shops Act, 1912.

I. (Here insert terms of draft order.)

II. Form for Votes.

[Borough] *or* [Urban District] *or* [Area] of

——	*Write in the Space below either* "Yes" *or* "No."
Are you in favour of the making of the above Order ?	

Signature
Address of Shop
Date

IV.—Notice to be affixed in Shops Partially Exempted from Closing for the Weekly Half-Holiday.

Shops Act, 1912, *Section* 10 (1).

This shop is closed for to-day except for the *trade or business of [ ].

* In shops where a wholesale and retail business are carried on together, and the shop is kept open on the half-holiday for the wholesale business, the word "wholesale" should be inserted in the notice before "trade."

V.—Form of Certificate of Appointment of an Inspector under the Shops Act, 1912.

Shops Act, 1912.

I HEREBY CERTIFY THAT *A. B.* has been appointed an inspector for the purposes of the above-mentioned Act for [the city of London or county or borough or urban district of].

(Signature)
The Lord Mayor of the City of London
or
Chairman of the County Council of
or
Mayor of the Borough of
or
Chairman of the Urban District Council of

Dated this day of 19 .

A.—Notice of Intention to make a Closing Order.

Shops Act, 1912.

NOTICE IS HEREBY GIVEN that the council propose to make a closing order for [specify class or classes of shops] in [specify the area] fixing the hours at which such shops shall be closed as follows:—

Any person wishing to make objection to the order or suggestions as to the provisions of the order should address a statement in writing to the clerk to the council before the [date] next.

NOTICE IS FURTHER GIVEN that the occupier of any shop to be affected by the order may, on presenting himself at [the council's offices] between the hours of and on [any] day before the aforesaid date, verify that his name, address and trade, are duly entered in the register of shops.

Dated this day of 19 .

Clerk to the Council.

B.—Notice for Ascertaining the Opinion of Occupiers of Shops on Proposed Closing Order by Taking a Vote.

Shops Act, 1912.

NOTICE IS HEREBY GIVEN that the council propose to make the order shown on the enclosed voting paper, provided they are satisfied that the occupiers of two-thirds of the shops to be affected by the order approve the order.

You are requested (i) to signify your opinion for or against the making of the order by writing "Yes" or "No" on the enclosed voting paper in the space provided for the purpose: and (ii) to return the paper by post to the council at [the council's offices] before the day of 19 , [or to hand the paper to a collector appointed by the council for the purpose, who will call for it, and will show, on request, his written appointment] [or to hand the paper to the person delivering it].

Dated this day of 19 .

Clerk to the Council.

FORM OF VOTING PAPER (*to be enclosed with the foregoing notice*).

Shops Act, 1912.

I. (Here insert terms of draft order.)

II. Form for Votes.

[City] [Borough] *or* [Urban District] *or* [Area] of

—	*Write in the space below either* "Yes" *or* "No."
Are you in favour of the making of the above Order ?	

Signature
Address of Shop
Date

C.—NOTICE OF MAKING OF ORDER.

Shops Act, 1912.

NOTICE IS HEREBY GIVEN that the council have made a closing order, of which a copy is annexed hereto, and have submitted the order to the Secretary of State for confirmation.

A copy of the order may be obtained by any person whom it may concern on application at [the offices of the council] :

If any person desires to make any objections to the provisions of the order he should address a written statement to the Secretary of State, Home Department, London, within one month from the date thereof, *i.e.*, before the day of , 19 .

Dated this day of , 19 .

Clerk to the Council.

ORDER.

In pursuance of the powers conferred on me by the Shops Acts, 1912 and 1913, I hereby make the following regulation :—

The notice required by section 1 (1) (d) of the Shops Act, 1913, to be affixed in premises for the sale of refreshments where the occupier elects that the provisions of the Act shall apply, shall be in the form in the schedule to this regulation.

R. MCKENNA,
One of His Majesty's Principal Secretaries of State.

Home Office,
8th March, 1913.

SCHEDULE.

This notice must be affixed and constantly maintained in a conspicuous position in the premises.

SHOPS ACT, 1913.

I HEREBY GIVE NOTICE that I elect that instead of the provisions of section 1 of the Shops Act, 1912, in regard to the weekly half-holiday and meal times for shop assistants, the provisions of the Shops Act, 1913 (as set out below), shall apply to all assistants employed wholly or mainly in connection with the business of these premises of the sale of* and that I propose to carry out those provisions in the manner indicated below.

This notice can only be withdrawn at the end of a year from this date or at the end of any succeeding year.

Dated the *day of* , 19 .

Signature of occupier or manager ________

* Insert "intoxicating liquor" or "refreshments" or both as the case may be.

1. The following provisions apply to all persons wholly or mainly employed in any capacity on these premises in connection with the business here carried on of the sale of*

2. TOTAL HOURS OF WORK.—An assistant must not be employed for more than 65 hours in any week EXCLUSIVE of meal times.

3. MEAL TIMES.—Two hours must be allowed to each assistant for meals on ordinary days and three-quarters of an hour on half-holidays. No assistant may be employed on any day for more than six hours without being allowed an interval of at least half an hour.

4. WEEK-DAY HOLIDAYS.—Every assistant must be given 32 whole holidays on a week day in the year. Of these six are to be given consecutively on full pay as an annual holiday, and the remaining 26 must be so distributed that there shall be at least two holidays in each month. Except as regards the consecutive holiday, two half-holidays on week days may be allowed instead of any whole holiday. On any such half-holiday the assistant may not be employed for more than six hours including meal time, and he must cease work not later than 3 p.m.

5. SUNDAY HOLIDAYS.—Every assistant must be given 26 whole holidays on Sunday in the year, and at least one in every three consecutive Sundays must be a whole holiday.

Steps taken to comply with the Act.†

WEEK-DAY HOLIDAYS.

SUNDAY HOLIDAYS.†

† Here state as precisely as possible in what manner it is proposed to carry out the Act. *E.g.*, it will be open to an occupier to give a weekly half-holiday commencing at 3 p.m. in lieu of the corresponding number of whole holidays. If he decides to do this, he can state this in the notice, and the day on which, as a general rule, the half-holiday will be given. Or he may decide to give a whole holiday every other week : if so, he can state this and the day on which the holiday will be given : &c., &c.

MODEL FORMS PREPARED BY THE HOME OFFICE.

FORM A.

MODEL FORM OF CLOSING ORDER FOR AREAS OR CLASSES OF SHOPS FOR WHICH NO ORDER IS IN FORCE FIXING THE DAY OF THE WEEKLY HALF-HOLIDAY.

The Council of in pursuance of the powers conferred upon them by the Shops Act, 1912, and after due compliance with its provisions, do hereby order as follows :—

1. This order which may be cited as applies to all shops in (the borough of) *or* (the area of) in which [the sale by retail of] *or* [the retail trade or business of a] is carried on.

2. All shops to which this order applies shall be closed for serving customers on the several days of the week at and after the following hours respectively (*p*) :—

Day of Week.	*Closing Hour.*
Monday	
Tuesday	(A closing hour not earlier than 7 p.m. should be fixed for *every* week-day).
Wednesday	
Thursday	
Friday	
Saturday	

Provided that nothing in this order shall affect the obligation of every occupier to close his shop at 1 p.m. on one week-day in each week for the weekly half-holiday in accordance with section 4 of the Shops Act, 1912, and that on the day specified in the notice affixed in his shop as the day for the half-holiday the closing hour fixed above shall not apply.

3 (*q*). Where any trade or business other than [the sale by retail of] *or* [the retail

(*p*) If it is desired that a later closing hour should be fixed for, or that the order should not apply to, any particular day or days (*e.g.*, the days immediately preceding Christmas or Easter), a proviso to that effect can be added to this article. It should be noted, however, that such a proviso cannot affect the obligation to close for the weekly half-holiday, and to make this clear a footnote should, if necessary, be added in the following terms : "These provisions do not apply to a day on which the shop is required to be closed for the weekly half-holiday, but any shopkeeper may, if he so desires, avail himself of the provisions of section 4 (5) of the Act, which provides that if a shop is closed throughout the whole of a Bank Holiday and the Bank Holiday does not fall on the day fixed for the weekly half-holiday, the shopkeeper may keep his shop open *either* on the half-holiday before, *or* on the half-holiday after the Bank Holiday."

(*q*) If the order applies to several trades, and *different* closing hours are fixed for different trades, article 3 should run as follows : "Where in any shop which is required by this

trade or business of a] is carried on in any shop to which this order applies, such shop may, subject to the provisions of any other order for the time being in force, be kept open after the closing hour mentioned in article 2 of this order, for the purpose of the first-mentioned trade or business alone, provided that (a) after the said closing hour there shall be exhibited in some conspicuous places on the exterior and in the interior of such shop notices in letters of the size of not less than two inches containing the following words: "SHOPS ACT, 1912. THIS SHOP IS CLOSED FOR TO-DAY EXCEPT FOR [THE SALE BY RETAIL OF] *or* [THE TRADE OR BUSINESS OF]"; (b) so far as reasonably practicable no goods in connection with the trade or business for which the shop is required to be closed shall be exhibited either inside or outside the shop.

4. (*In seaport towns.*) Nothing in this order shall prevent customers from being served on any day after the closing hour with victuals, stores or other necessaries for a ship on her arrival at or immediately before her departure from a port.

FORM B.

MODEL FORM OF CLOSING ORDER FOR AREAS OR CLASSES OF SHOPS FOR WHICH AN ORDER IS IN FORCE FIXING THE DAY OF THE WEEKLY HALF-HOLIDAY (*r*).

The Council of in pursuance of the powers conferred upon them by the Shops Act, 1912, and after due compliance with its provisions, do hereby order as follows:—

1. This order, which may be cited as applies to all shops in (the borough of) *or* (the area of) in which [the sale by retail of], *or* [the retail trade or business of a] is carried on.

2. All shops to which this order applies shall be closed for serving customers on the several days of the week at and after the following hours respectively (*s*):—

Day of Week.	*Closing Hour.*
Monday	(Specify the closing hour, not earlier than 7 p.m., for five days of the week. Opposite the day fixed for the weekly half-holiday, insert "Weekly half-holiday—shops closed at 1 p.m.")
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	

(*t*) Provided that where the occupier of a shop elects to close his shop for the weekly half-holiday on ( ) instead of on ( ) the closing hour on ( ) shall be (p.m.).

3 (*u*). Where any trade or business other than [the sale by retail of] *or* [the retail trade or business of a] is carried on in any shop to which this order applies, such shop may, subject to the provisions of any other order for the time being in force, be kept open after the closing hour mentioned in article 2 of this order, for the purpose of the first-mentioned trade or business alone, provided that (a) after the said closing hour there shall be exhibited in some conspicuous places on the exterior and in the interior of such shop notices in letters of the size of not less than two inches containing the following words: "SHOPS ACT, 1912. THIS SHOP IS CLOSED FOR TO-DAY EXCEPT FOR [THE SALE BY RETAIL OF] *or* [THE TRADE OR BUSINESS OF]"; (b) so far as reasonably practicable no goods in connection with the trade or business for which the shop is required to be closed shall be exhibited either inside or outside the shop.

4. (*In seaport towns.*) Nothing in this order shall prevent customers from being served on any day after the closing hour with victuals, stores or other necessaries for a ship on her arrival at or immediately before her departure from a port.

order to be closed at a certain hour in respect of any trade or business, any other trade or business is also carried on for which a later closing hour or no closing hour is fixed by this order, such shop may, subject to the provisions of any other order, for the time being in force, be kept open for the purpose of such other trade or business alone, provided that, etc., etc."

If the order applies to all trades article 3 should run as follows: "Where in any shop to which this order applies any trade or business exempted by the Third Schedule to the Act is carried on, such shop may be kept open after the closing hour fixed by article 2 of this order for the purpose of such exempted trade or business alone, provided that, etc., etc."

(*r*) A closing order in this form cannot be confirmed until an order has been made fixing the day of the weekly half-holiday. A copy of the Half-Holiday Order should be forwarded when the closing order is submitted for confirmation.

(*s*) See note (*p*), *ante*, p. 2520.

(*t*) The proviso is intended for fixing the evening closing hour on the ordinary day of the weekly half-holiday in cases where the occupier elects to close on the alternative day.

(*u*) See note (*q*), *ante*, p. 2520.

Appendix II.

FORM C.

ORDER UNDER SECTION 4 (2) FIXING THE DAY OF THE WEEKLY HALF-HOLIDAY FOR NON-EXEMPTED SHOPS.

The Council of in pursuance of the powers conferred upon them by the Shops Act, 1912, and after due compliance with its provisions, do hereby order as follows:—

1. This order, which may be cited as applies to all shops in the borough of [*or* the area of] in which the sale by retail of [*or* the retail trade or business of] is carried on.

Or, if the order is to apply to all non-exempted shops—

This order, which may be cited as applies to all shops in the borough of [*or* the area of] except shops which are exempted by the Act or by any order made in pursuance of the Act from the obligation to close for the weekly half-holiday.

2. All shops to which this order applies shall be closed for the weekly half-holiday on at 1 p.m. [throughout the year] (*x*).

Provided that any shopkeeper may substitute for on affixing a notice to that effect in his shop (*y*).

NOTE.—It is provided by section 4 (5) of the Act that if a shop is closed throughout the whole of a Bank Holiday and the Bank Holiday does not fall on the day fixed for the weekly half-holiday, the shopkeeper may keep his shop open *either* on the half-holiday before, *or* on the half-holiday after the Bank Holiday.

FORM D.

ORDER UNDER SECTION 4 (4) EXEMPTING (*z*) SHOPS OF A PARTICULAR CLASS FROM THE OBLIGATION TO CLOSE FOR THE WEEKLY HALF-HOLIDAY OF FIXING AN HOUR LATER THAN 1 P.M. FOR THE COMMENCEMENT OF THE HALF-HOLIDAY.

The Council of in pursuance of the powers conferred upon them by the Shops Act, 1912, and after due compliance with its provisions, do hereby order as follows:—

1. This order, which may be cited as applies to all shops in the borough of [*or* the area of] in which the sale by retail of [*or* the retail trade or business of] is carried on.

2. All shops to which this order applies are hereby exempted from the provisions of section 4 of the Act in regard to closing for the weekly half-holiday (*a*).

FORM E.

ORDER UNDER SECTION 4 (6) AND (2) (*b*) EXTENDING THE PROVISIONS OF SECTION 4 TO EXEMPTED SHOPS AND FIXING THE DAY OF THE WEEKLY HALF-HOLIDAY.

The Council of in pursuance of the powers conferred upon them by the Shops Act, 1912, and after due compliance with its provisions, do hereby order as follows:—

1. This order may be cited as

2. The provisions of section 4 of the Act are hereby extended to the sale by retail of (*c*) [*or* to such parts of the retail trade or business of as are exempted by section 4 (6) and the Second Schedule to the Act (*d*)].

(*x*) The Secretary of State is advised that a local authority have no power to insert in the order provisions exempting shopkeepers during any period of the year from the obligation to close for the half-holiday, but it is open to them to fix different days for the half-holiday for different periods of the year.

(*y*) A provision to this effect must be inserted in the order, but the Secretary of State is advised that the local authority may add conditions as to the manner in which the power of changing the day may be exercised, *e.g.*, a condition may be inserted as to the time during which the notice shall be affixed in the shop before the change is to take effect.

(*z*) The Secretary of State is advised that the local authority have no power to make an order under this sub-section for part of the year only.

(*a*) If the exemption is to be limited to fixing a later hour than 1 p.m. for the commencement of the half-holiday, insert here "to the following extent, namely: the closing hour on the weekly half-holiday shall be ." The hour so fixed must not be later than 2 p.m.

(*b*) If it is proposed by the order to fix a later hour than 1 p.m. for the commencement of the half-holiday, sub-s. (4) should also be mentioned here.

(*c*) If this form of drafting the clause is adopted, the name of the exempted article should be here specified in accordance with terms of the Second Schedule.

(*d*) This form of drafting will be found convenient where it is desired to fix the day of the weekly half-holiday for the whole of a business, part only of which is exempted by the Act, *e.g.*, the business of a chemist.

3. All shops in which the sale by retail of [or the retail trade or business of] is carried on shall be closed for the weekly half-holiday at 1 p.m. on [throughout the year] (*e*). Appendix II.

Provided that any shopkeeper may substitute for on affixing a notice to that effect in his shop (*f*).

NOTE.—It is provided by section 4 (5) of the Act that if a shop is closed throughout the whole of a Bank Holiday and the Bank Holiday does not fall on the day fixed for the weekly half-holiday, the shopkeeper may keep his shop open *either* on the half-holiday before, *or* on the half-holiday after the Bank Holiday.

FORM F.

ORDER UNDER SECTION 11 (1) SUSPENDING IN A HOLIDAY RESORT THE OBLIGATION TO CLOSE FOR THE WEEKLY HALF-HOLIDAY DURING A PERIOD OF THE YEAR.

The Council of in pursuance of the powers conferred upon them by the Shops Act, 1912, do hereby order as follows :—

The obligation to close for a half-holiday on one week day in each week is hereby suspended in respect of all shops (*g*) in the during the period[s] (*h*) from to .

NOTICE UNDER SECTION 2 (3) IN REGARD TO THE EMPLOYMENT OF YOUNG PERSONS UNDER 18 IN SHOPS.

SHOPS ACT, 1912—SECTION 2.

NOTICE AS TO EMPLOYMENT OF YOUNG PERSONS UNDER 18.

A YOUNG PERSON UNDER 18 MUST NOT BE EMPLOYED IN OR ABOUT * THIS SHOP FOR MORE THAN 74 HOURS, INCLUDING MEAL TIMES, IN ANY WEEK.

A young person under 18 must not be employed in this shop at all on any day on which he has already worked in a factory or workshop for the whole number of hours permitted by the Factory and Workshop Act.

On any day on which a young person under 18 is employed partly in this shop and partly in a factory or workshop the number of hours of work in the shop and in the factory or workshop together must not exceed the total number permitted by the Factory and Workshop Act.

The total number of hours permitted by the Factory and Workshop Act for a young person is 12 hours, including 1½ hours for meals, on an ordinary day, and 8 hours, including half an hour for a meal, on the weekly short day.

Meaning of "shop."—The above provisions apply to all shops in which any retail trade or business is carried on, including the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors and retail sales by auction. They also apply to wholesale shops, and to warehouses in which assistants are employed for hire.

* It has been held by the High Court that these words apply to persons employed outside the shop in the business of the shop.

† FORM OF AGREEMENT IN CASES WHERE A COUNTY COUNCIL DELEGATE THEIR POWERS TO MAKE ORDERS UNDER SECTIONS 4, 5 AND 11 OF THE ACT TO THE COUNCIL OF AN URBAN OR RURAL DISTRICT.

In pursuance of the powers conferred on them by section 13, sub-section 2, of the Shops Act, 1912, the County Council of and the District Council of hereby agree that the powers of making orders conferred by sections 4, 5 and 11 of the said Act,‡ hereinafter called the delegated powers, shall be exercised in the district by the district council as agents for the county council, on the following terms and subject to the following conditions :—

‡ Insert "and the power of giving certificates under the Second Schedule in respect of retail trade carried on at an exhibition or show" if it is desired to delegate this power as well.

1. The district council shall pay the whole of the expenses incurred in connection with the exercise by them of the delegated powers.

† Under the First Schedule to the Stamp Act, 1891, every agreement requires a stamp of the value of 10*s.*, and every counterpart a stamp of the value of 5*s.*

(*e*) See note (*x*) *ante*, p. 2522.

(*f*) See note (*y*) *ante*, p. 2522.

(*g*) The Secretary of State is advised that an order under s. 11 (1) must be a general order applying to *all* classes of shops, and cannot be made for particular classes of shops only. The order should accordingly be in all cases a separate order, and should not be combined with orders under s. 4.

(*h*) The period or periods must not exceed in the aggregate four months in any year.

Appendix II.

2. The district council shall make such reports to the county council as to the exercise by them of the delegated powers as the county council may from time to time require.

3. The district council shall on making any order in pursuance of any of the delegated powers forthwith send a copy of the order, certified to be a true copy by the clerk to the district council, to the county council, and shall on the revocation of any order forthwith inform the county council of such revocation.

4. The district council and its officers shall give the county council and its officers any assistance that may be necessary for the purpose of the enforcement by the county council and its officers of the provisions of the Act and of any orders made thereunder, and shall produce for inspection by the officers of the county council at all reasonable times the registers of shops prepared by the district council in pursuance of the regulations of the Secretary of State.

5. This agreement may be determined by either council on (three months) notice being given.

* † FORM OF AGREEMENT IN CASES WHERE A COUNTY COUNCIL DELEGATE ALL THEIR POWERS UNDER THE ACT TO THE COUNCIL OF AN URBAN OR RURAL DISTRICT.

In pursuance of the powers conferred on them by section 13, sub-section 2, of the Shops Act, 1912, the County Council of and the District Council of hereby agree that the powers of the county council under the said Act, hereinafter called the delegated powers, shall be exercised in the district by the district council as agents of the county council on the following terms and subject to the following conditions :—

1. The district council shall pay the whole of the expenses incurred in connection with the exercise by them of the delegated powers, but shall be entitled to receive from the county council a sum equal to the amount raised by the county council by rate within the area of the district council for the purposes of the Shops Act.

2. The district council shall appoint such number of inspectors to enforce the provisions of the Shops Act and of any orders in force in the district as the county council may think necessary, and the remuneration of the inspectors and the conditions of their appointment shall be subject to the approval of the county council.

3. The inspectors appointed as aforesaid shall also act as inspectors of the county council to enforce within the district the provisions of the Employment of Children Act, 1903, and of any bye-laws in force in the district under the Act, so far as they apply to children employed in or in connection with shops.

4. The district council shall make an annual report to the county council as to the exercise by them of the delegated powers and the enforcement of the said Acts, and of any orders or byelaws as aforesaid in force in the district, and shall also make such further reports as the county council may from time to time require.

5. This agreement may be determined by either council on (three months) notice being given.

* As regards the adoption of this form of agreement, see Home Office circular, pp. 58–59.
† See footnote † on p. 2523.

SLAUGHTER-HOUSES.

THE HUMANE SLAUGHTERING OF ANIMALS—CIRCULAR.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
20th March, 1908.

SIR,—I am directed by the Local Government Board to state that they have recently had under consideration the question of the slaughtering of animals in slaughter-houses in connection with the report (*i*) of the committee appointed by the Admiralty upon the subject of the humane slaughtering of animals, and they think it may be desirable to draw the attention of the council to the subject and especially to certain recommendations made by that committee as to methods of slaughter. Under the terms of the reference the investigations by the committee related to the following animals, viz., cattle, calves, sheep, lambs, and pigs.

The committee suggested the universal enforcement of the following regulations :—

"(a) All animals, without exception, must be stunned, or otherwise rendered unconscious, before blood is drawn :

(*i*) Parliamentary Paper [Cd. 2150], 1904.

(b) Animals awaiting slaughter must be so placed that they cannot see into the slaughter-house, and the doors of the latter must be kept closed whilst slaughtering is going on ;

(c) The drainage of the slaughter-house must be so arranged that no blood or other refuse can flow out within sight or smell of animals awaiting slaughter, and no such refuse shall be deposited in proximity to the waiting-pens ;

(d) If more animals than one are being slaughtered in one slaughter-house at the same time, they must not be within view of each other ;

(e) None but licensed men shall be employed in or about slaughter-houses."

Many urban district councils, and some rural district councils possessing the necessary powers have, under the provisions of the Public Health Act, 1875, made a byelaw for preventing cruelty in slaughter-houses. This byelaw is usually based on one of the Board's model byelaws, which provides :—

"Every occupier of a slaughter-house and every servant of such occupier and every other person employed upon the premises in the slaughtering of cattle shall, before proceeding to slaughter any bull, ox, cow, heifer, or steer, cause the head of such animal to be securely fastened so as to enable such animal to be felled with as little pain or suffering as practicable, and shall in the process of slaughtering any animal use such instruments and appliances and adopt such method of slaughtering and otherwise take such precautions as may be requisite to secure the infliction of as little pain or suffering as practicable."

Whilst this byelaw is intended to secure the humane slaughtering of animals it does not require "stunning in all cases" as recommended by the committee. The Board think that byelaws requiring animals to be stunned before slaughter may be made both under the first paragraph of section 169 of the Public Health Act, 1875, as regards slaughter-houses provided by a local authority, and under section 128 of the Towns Improvement Clauses Act, 1847, as incorporated by the second paragraph of that section, for the regulation of private slaughter-houses, and they are prepared to consider applications for the confirmation of such byelaws.

It must, however, be remembered that attempts at stunning, carelessly or unskilfully made, may be the means of inflicting, instead of avoiding, unnecessary pain, and hence the Board suggest that, before making a byelaw requiring the stunning of any animals other than horned cattle, the local authority should ascertain how far the butchers of the district are prepared to carry out the practice. In relation to this question the Board have been advised by the Board of Agriculture and Fisheries that they would see no objection to a byelaw requiring the stunning of pigs or calves, but that the stunning of sheep is a difficult operation, in the carrying out of which cruelty might easily occur. On the other hand the Admiralty Committee satisfied themselves that sheep can be stunned expeditiously and without difficulty, by striking them on the top of the head between the ears—not on the forehead—with a small club having a heavy head ; and they state that in Denmark, many parts of Germany, and Switzerland, the law requires that sheep shall always be stunned previous to being stuck. But while the practice of stunning sheep may be a proper one to adopt in public abattoirs, where it will be carried out by skilled slaughtermen, the Board doubt whether it is advisable to require its adoption in private establishments unless there is reasonable ground for believing that it will be properly performed.

In some cases it may be necessary to include in such a series of byelaws a provision allowing the Jewish method of slaughter. The Board have recently confirmed the following byelaw for the corporation of Liverpool :—

"No person shall proceed to slaughter any bull, ox, cow, heifer, calf, or pig, until the same shall have been effectually stunned.

"Provided that this requirement shall not be deemed to apply to any member of the Jewish faith, duly licensed by the chief Rabbi as a slaughterer, when engaged in the slaughtering of cattle intended for the food of Jews according to the Jewish method of slaughtering, if no unnecessary suffering is inflicted."

Appendix II.

In connection with the recommendations (b), (c) and (d), the committee observe :—

"The animals awaiting slaughter should be spared as far as possible from any contact with the sights or smells of the slaughter-house itself.

"There is no point which the committee have more carefully investigated than the question as to whether animals do or do not suffer fear from this contact, and the evidence of those best qualified to judge is so conflicting that no absolute verdict can be given. As an animal cannot speak it is impossible to accurately determine to what extent it does or does not suffer from fear, but there is no doubt that cattle, especially, frequently show great reluctance to enter the slaughter-chamber, and can only be dragged in by the employment of considerable force. The presumption is that what they chiefly object to is the smell of blood, but whether this can be proved or not, it is obviously undesirable from a purely business standpoint to run any risk, as it appears to be an established fact that the flesh of an animal, killed whilst in a state of fear or excitement, loses some of its palatable and marketable qualities.

"Apart from this, the question is of such vital importance from the standpoint of humanity that it seems clear that the animal should be given the full benefit of the doubt.

"With this object in view, the waiting-pens should be separated from the slaughter-chamber, and the latter should be shut off by sliding doors.

"It is also of great importance that the pitch of the floor, and the drainage of the slaughter-chamber, should be away from, and not run into, the waiting-pens, as is often the case at present. The common practice of depositing blood barrels, freshly removed hides, or refuse from the slaughter-house in close proximity to the waiting-pens should also be prohibited. . . . Cattle should, when possible, be slaughtered screened off from their fellows."

When public slaughter-houses have been provided by a local authority under the powers contained in section 169 of the Public Health Act, 1875, or similar powers in local Acts, the authority could probably in most cases give effect to the recommendations of the committee just referred to. The local authority have direct control over the structure and arrangement of the slaughter-house, and they have power to make byelaws with respect to the management of the slaughter-house.

In the case of private slaughter-houses there is more difficulty in providing for these matters under the limited powers of control which may be derived from section 128 of the Towns Improvement Clauses Act, 1847, as the Board do not think that it would be permissible to include in a byelaw framed for preventing cruelty, requirements directly affecting the structure of the premises. But if the local authority are of opinion that a clause or clauses on the subjects dealt with in paragraphs (b), (c) and (d), can be enforced without infringing this principle, the Board would be willing to consider any proposal laid before them. They may say that they have in some recent cases allowed a byelaw prohibiting an occupier of a slaughter-house from causing or allowing any animal to be slaughtered, or its carcase to be dressed after slaughter, within the view of any other animal.

With respect to the recommendation (e), the Board may state that there is no power in the general law enabling a local authority to license slaughterers and to prohibit any person who has not a licence from slaughtering. The object of recommendation (e) cannot therefore be directly attained at the present time, but local authorities may be able to some extent to secure employment of properly qualified slaughterers, especially where they have the management of public slaughter-houses.

In a rural district, sections 169 and 170 of the Public Health Act, 1875, and the amending provisions of the Public Health Acts Amendment Act, 1890, are not in operation unless they have been put in force by an Order of the Board.

The Board do not regard the first paragraph of section 169 of the Public Health Act, 1875, which enables an authority to provide slaughter-houses, as generally suitable to a rural district. They are, however, willing to confer

on a rural district council the powers contained in the rest of the section in respect of any parishes in which slaughter-houses have been or are likely to be established.

The Board would recommend the council to obtain a copy of the report of the committee if they have not already done so. The council may have the opportunity, through their officers or otherwise, of bringing the recommendations of the committee under the notice of persons engaged in the slaughtering of animals, with the result probably of improved methods of slaughter being adopted in premises where, at present, objectionable practices are in operation.

This circular will be placed on sale, so that copies may shortly be obtained from Messrs. Wyman & Sons, Limited, Fetter Lane, E.C., either directly or through any bookseller.

I am, Sir, your obedient servant,

S. B. PROVIS, *Secretary.*

The Town Clerk, or
The Clerk to the Urban District Council, or
Rural District Council.

SMALL DWELLINGS.

SMALL DWELLINGS ACQUISITION ACT, 1899 (*j*).

INFORMATION TO BE FURNISHED TO THE LOCAL GOVERNMENT BOARD WITH APPLICATIONS FOR SANCTION TO BORROW MONEY.

1. Name of local authority . . . .
2. Population of district according to the last census . . . .
3. Rateable value of district for purposes of the rate applicable to the general purposes of the Public Health Acts . . . £

The following documents and information should be forwarded to the Board :—

(*k*) (i.) A copy of the resolution of the local authority undertaking to act under the Act ;

(ii.) A copy of the resolution of the local authority applying for the Board's sanction to borrow the money ;

(iii.) A statement in the form of a balance sheet, of the annual receipts and expenditure of the local authority under the Act, and showing the sum which would be equal to one penny in the pound upon the rateable value of the district ;

(iv.) The information indicated on pages 2 and 3 of this form as regards each of the advances proposed to be made ; and

(v.) The information indicated in the accompanying form K, No. 2 (*as to debt of district*).

In the case of a district containing a population, according to the last census for the time being, of less than ten thousand, the following additional document should be forwarded to the Board ;

(*k*) (vi.) A copy of the consent of the county council under section 9 (1) of the Act to the council of the district being the local authority in the district for the purposes of the Act.

(*The particulars are set out on the next page.*)

(*j*) 62 & 63 Vict. c. 44, *ante*, p. 1958.

(*k*) These particulars need not be sent if they have already been furnished in connection with a previous application, but a notification to the effect that such particulars have already been supplied should be placed on the form.

Appendix II.

PARTICULARS TO BE FURNISHED AS REGARDS EACH OF THE PROPOSED ADVANCES.

Amount of proposed advance.	(2) Agreed terms as to		(3) Situation and description of houses in respect of which the advance is made.	(4) Name of resident.	(5) Is the property leasehold or freehold.	(6) If leasehold, what is		(7) Market value of the ownership. (*l*)	(8) What, according to the rate-book, is		(9) Have the local Authority satisfied themselves that each and all the requirements of section 2 of the Act have been or will be complied with ?
	(a) Period for repayment.	(b) Rate of Interest to be paid.				(a) The unexpired period of the lease?	(b) The ground rent?		(a) The gross rental of the property?	(b) The rateable value of the property?	
£	years.	per cent.				years.	£	£	£	£	

(*l*) Information should be given as to the basis upon which the valuation is formed, and a copy of any valuation made on behalf of the local authority should be supplied.

(*Signed*)____________________

Clerk to the local authority.

SMALL DWELLINGS ACQUISITION ACT, 1899.

INFORMATION TO BE FURNISHED TO THE LOCAL GOVERNMENT BOARD WITH APPLICATIONS FOR APPROVAL OF THE BORROWING OF MONEY.

1. Name of county borough . . . .
2. Rateable value of county borough for purposes of the borough rate . . £ .

The following documents and information should be forwarded to the Board:

(i.) A memorial und r the seal of the town council applying for the Board's approval of the borrowing of the money. The memorial (which should be on paper of foolscap size) should be accompanied by a copy of the notice given in pursuance of section 236 of the Municipal Corporations Act, 1882, endorsed with a certificate to the effect that the notice has been affixed to the town hall for one month prior to the date of the application and that the application itself has been open to public inspection during same period.

(ii.) A statement, in the form of a balance sheet, of the annual expenses and receipts of the town council under the Act and showing the sum which would be equal to one penny in the pound upon the rateable value of the county borough; and

(iii.) The information indicated on pages 2 and 3 of this form as regards each of the advances proposed to be made.

(*Here follows a Schedule similar to that appended to the preceding form*).

SMALL HOLDINGS AND ALLOTMENTS.

ALLOTMENTS ACTS, 1887 TO 1907.—BOARD OF AGRICULTURE AND FISHERIES.

MODEL REGULATIONS FOR THE COUNCILS OF BOROUGHS AND URBAN DISTRICTS (*m*) AS TO ALLOTMENTS.

REGULATIONS made by the (*n*) with respect to allotments for the (*o*) .

Interpretation of Terms.

1. Throughout these regulations the expression "the council" means the (*n*) and includes any allotment managers appointed by the council under the Allotment Acts, 1887 to 1907.

Definition of the persons eligible to be tenants of the Allotments.

2. Any man or woman who at the time of application to the council for an allotment has been resident in the (*p*) for not less than months, and belongs to the labouring population, shall be eligible to become a tenant of an allotment, subject to the statutory provision that one person shall not hold allotments acquired under the above mentioned Acts exceeding five acres.

Division of the land into Allotments.

3. The council, before giving notice of their intention to let any land for allotments shall divide the land, and shall cause a plan to be prepared showing each allotment, and distinguishing it by a separate number. They shall enter each allotment under its number in the register required to be kept under section 15 of the Allotments Act, 1877.

(*m*) A practically similar form has been prepared for use by parish councils.
(*n*) *Insert* "mayor, aldermen and burgesses of the borough of acting by the council," *or* "urban district council of ."
(*o*) *Insert* "said borough," *or* "said urban district."
(*p*) *Insert* "borough," *or* "district."

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Notices to be given for the letting of the Allotments.

4. The council shall give public notice of bills or placards, posted in some conspicuous places in the (*q*) or otherwise exhibited therein, setting forth the particulars as to any allotments which they propose to let.

Such notice shall specify the allotment to be let and the size thereof, the rent to be paid for the same, the name and address of the clerk to the council to whom applications for hiring of an allotment or for forms of application are to be sent, and the last day for receiving an application for an allotment.

If any special condition is to apply to the allotments, or any of them, the notice shall specify such condition, or state where copies of the Form of Agreement for letting for such allotments may be seen.

If the tenant is to pay for tenant right or compensation for improvements this fact and the amount if then ascertained shall be stated in the notice.

Regulations as to the letting of the Allotments, and for preventing any undue preference in the letting thereof.

5. The council shall not let any allotment unless and until notice that they propose to let the same has been duly given in pursuance of the regulation in that behalf at least (*two*) weeks before the last day for receiving an application for such allotment.

Every application for an allotment shall be in the form appended to these regulations, and shall be sent or delivered to the clerk to the council.

In letting an allotment for which there are two or more applicants eligible to become tenants and likely to keep the allotment in a proper state of cultivation, preference shall be given to an applicant who does not hold an allotment or agricultural land (other than a garden of 20 poles or less attached to his residence) either from the council or otherwise over an applicant who does hold such land, but subject to such preference the tenant shall be determined by the drawing of lots by the council. A quitting tenant of land shall for the purposes of this regulation be treated as not holding that land.

Agreements for letting Allotments.

6. When the council have decided to let an allotment to an applicant, an agreement shall be signed by the clerk to the council on behalf of the council, and by the applicant. The agreement shall be in the form appended to these regulations, or to the like effect, unless the council and the applicant agree to vary the form.

General Conditions under which the Allotments are to be cultivated.

7. The tenant of an allotment shall comply with the following conditions :—

(1) He shall keep the allotment free from weeds, and well manured, and otherwise maintain it in a proper state of cultivation.

(2) He shall not cause any nuisance or annoyance to the occupier of any other allotment, or obstruct any path set out by the council for the use of the occupiers of the allotments.

(3) He shall not underlet, assign, or part with the possession of the allotment or any part of it.

(4) He shall not, without the written consent of the council, cut or prune any timber or other trees, or take, sell, or carry away any mineral, gravel, sand, or clay.

Special Conditions applicable only when notice of their application to particular Allotments has been given in accordance with these Regulations.

8. The tenant of an allotment shall comply with any of the following conditions, of which notice of their application to the allotment has been given, in accordance with these regulations :—

(1) He shall keep every hedge that forms part of the allotment properly cut and trimmed, keep all ditches properly cleansed, and shall maintain and keep in repair any other fences and any gates on the allotment.

(*q*) See note (*p*), *ante*, p. 2529.

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(2) He shall not, without the written consent of the council, erect on the allotment any building except [*Here insert, toolhouse, greenhouse, fowlhouse, pigsty, or such other building as, in the opinion of the council, should be permitted to be erected by the tenant*].

(3) He shall not, without the written consent of the council, plant in the allotment any fruit trees or bushes, strawberry plants, asparagus, rhubarb or other market garden crops which continue productive for two or more years. [*This Regulation shall only be applied where the land has been hired by the council.*]

(4) He shall not, without the written consent of the council, break up any pasture.

(5) He shall not use barbed wire for a fence adjoining any path set out by the council for the use of occupiers of the allotments.

(6) He shall, as regards the allotment, observe and perform all conditions and covenants contained in the lease under which the council hold the land.

(7) He shall observe and perform any other special condition which the council consider necessary to preserve the allotment from deterioration, and of which notice to applicants for the allotment is given in accordance with these regulations.

Notice of determination of a tenancy to be given to Tenants of Allotments.

9. The council shall give to the tenant of any allotment not less than months' notice of the determination of his tenancy, such notice to take effect on (*the 25th day of March or the 29th day of September*) ; provided always that this regulation shall not apply in the case of the determination of a tenancy in pursuance of section 8 of the Allotments Act, 1887.

Examination of the Register of Allotments by Ratepayers.

10. The register required to be kept under section 15 of the Allotments Act, 1887, showing the particulars of the tenancy, acreage, and rent of every allotment let, and of the unlet allotments, shall be deposited at the office of the clerk to the council, and shall be open at all reasonable hours to the examination of any ratepayer in the (*r*) .

Exemption of certain lettings from these Regulations.

11. These regulations shall not apply to any land let to an association, or to any allotment let before the date of the confirmation of these regulations, or to any allotment which the council, under special circumstances to be recorded in their minutes, may exempt from these regulations.

FORM OF APPLICATION FOR ALLOTMENTS.

To the Clerk to the (*s*)

I the undersigned hereby make application for one [*or* No.] of the allotments provided by the council at

1. Name . . . .
2. Residence . . . .
3. Age . . . .
4. Occupation . . . .
5. How long resident in the (*r*) . . . .
6. Whether holding any allotment, or agricultural land (other than a garden of 20 poles or less attached to my residence), and if so—
   (a) From whom . . . . . .
   (b) Extent of land so held . . . . . .
   (c) Whether quitting the land, and if so, why ? .

(*r*) *Insert* "borough," *or* "district."

(*s*) *Insert* "Town Council for the Borough of ," *or* "Urban District Council of ."

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In the event of my application being granted, I agree when required by the council to sign an agreement for letting in the form prescribed by the regulations, and to pay the stamp duty on such agreement, and to pay for tenant right and compensation for improvements the sum stated in the notice of letting (*or* such sum as shall be found due to the outgoing tenant for such matters).

Signature . . . .

Date . . . .

FORM OF AGREEMENT FOR LETTING.

Agreement made this day of 19 , between the (*t*) (hereinafter called the council) of the one part, and of (hereinafter called the tenant) of the other part, whereby the said council agrees to let, and the said tenant agrees to hire as a yearly tenant from the day of 19 , the allotment[s] numbered in the register of allotments provided by the council and containing or thereabouts [subject to the exceptions and reservations contained in the lease under which the council hold the land] at the yearly rent of , payable *half-yearly* and at a proportionate rent for any part of a year over which the tenancy may extend.

The tenancy is subject to the regulations endorsed on this agreement and to the following conditions :—

(a) The rent shall be paid on the day of , the day of , [the day of and the day of] in each year.

(b) The tenant shall keep the allotment free from weeds, and well manured, and otherwise maintain it in a proper state of cultivation.

(c) The tenant shall not cause any nuisance or annoyance to the occupier of any other allotment, or obstruct any path set out by the council for the use of the occupiers of the allotments.

(d) The tenant shall not underlet, assign, or part with the possession of the allotment or any part of it.

(e) The tenant shall not, without the consent of the council, cut or prune any timber or other trees, or take, sell, or carry away any mineral, gravel, sand, or clay.

(f) Any member or officer of the council shall be entitled at any time when directed by the council to enter and inspect the allotment.

(g) The tenancy shall determine on the 25th day of March or the 29th day of September next after the death of the tenant. It may also be determined under section 8 of the Allotments Act, 1887, on one month's notice :—

(1) If the rent is in arrear for not less than forty days ; or

(2) If it appears to the council that the tenant not less than three months after the commencement of the tenancy has not duly observed the conditions contained in or endorsed on this agreement, or is resident more than one mile out of the .

The tenancy may also be determined by the council or tenant by months' notice in writing expiring on (*the 25th day of March, or the 29th day of September*).

Signed

Clerk to the Council

Witness

Signed

Tenant

Witness

[*Any special conditions affecting the allotment are to be endorsed on the agreement.*]

SMALL HOLDINGS AND ALLOTMENTS (COMPULSORY HIRING) REGULATIONS, 1908.

(Dated 24th March, 1908.)

The Board of Agriculture and Fisheries, in pursuance of the provisions of the Small Holdings and Allotments Act, 1907, do hereby make the following regulations :—

PART I.

PROCEDURE FOR OBTAINING ORDER FOR COMPULSORY HIRING.

1.—(1) A compulsory order submitted by a council to the Board shall be in the form set forth in the appendix to these regulations or to the like effect ;

(*t*) See note (*s*), *ante*, p. 2531.

provided that any order so submitted may be modified by the Board after notice of the intended modification to the council and to those persons interested in the land who, in the opinion of the Board, would be affected thereby, and after consideration of any objection thereto presented to the Board within the time prescribed by such notice. Appendix II.

2.—(1) When a council proposes to hire land compulsorily under the Act of 1907 the council, not less than one calendar month before they submit the compulsory order to the Board, shall publish the order by means of a notice containing such particulars as are prescribed by this regulation, inserted as an advertisement in one or more newspapers circulating in the locality, and by furnishing a copy of the order (except any plan annexed to or referred to in the order) free of charge to any person interested in the land who shall apply for the same. The council shall also give notice of the order, containing such particulars as are required by this regulation, to the Board and to each owner, lessee, and occupier of the land proposed to be hired, or to such of them as shall be known to the council.

(2) Every notice under this regulation shall contain the following particulars :—

(a) The purpose for which the land is proposed to be hired ;

(b) the quantity, description, and situation of the land and the names of the reputed owners, lessees, and occupiers thereof ;

(c) the number of years for which the land is proposed to be hired ;

(d) the place where copies of the order (except any plan annexed to or referred to in the order) may be obtained free of charge by any person interested in the land ;

(e) the place where the plan (if any) annexed to or referred to in the order may at all reasonable times until the order is submitted to the Board be inspected by or on behalf of any person interested in the land.

(3) Every notice shall also state that any objection must be presented to the Board, and every notice sent to an owner, lessee, or occupier shall state the period within which an objection may be so presented in accordance with these regulations. A notice may also state that a copy of every objection should be sent to the clerk to the council.

(4) If the council is a county council acting on behalf of a parish council or parish meeting the notice shall so state and give the name of the parish.

3. The period within which an objection to a compulsory order may be presented to the Board by a person interested in the land to which the order relates shall be the period of one calendar month from and after the date on which notice of the order is sent to him, or if no notice is sent to him, in that case from and after the date of the latest advertisement of a notice of the order.

4.—(1) Notice of the confirmation of the order shall be given by the council as soon as practicable to each owner, lessee, and occupier of the land authorised to be hired, and a copy of the order, and of any plan annexed to or referred to in the order shall be furnished by the council to any person interested in the land on application by such person and payment by him of the reasonable cost of preparing such copy.

(2) Upon the application of any person interested in the land authorised to be hired, or in the interest of an existing tenant which will or may be extinguished by the compulsory hiring, the order shall be so framed as to make such provision as is necessary for securing the interest of any party other than the owner or existing tenant in any compensation payable in respect of the compulsory hiring, and for that purpose there may be incorporated in the order, with such adaptations as are required, any of the provisions of the Lands Clauses Consolidation Act, 1845, which relate to compensation coming to parties having limited interests.

PART II.

PROCEDURE FOR ENFORCING COMPULSORY HIRING ORDER.

5.—(1) When the council require to hire compulsorily any land authorised to be hired by a compulsory order, they shall give notice to that effect to the owner of such land, and to any existing tenant thereof, or to such of the said parties as shall, after diligent inquiry, be known to the council, and by such notice shall demand from such parties the particulars of their estate and

Appendix II. interest in such land, in so far as such particulars are required in order to ascertain the owner thereof and the interest of the existing tenants (if any); and every such notice shall state the particulars of the land required to be hired, and the term for which the council are authorised to hire the same, and that the council are willing to treat for the hiring thereof. The council shall in every such notice state a date consistent with the terms of the order on which they require that the tenancy of the council shall commence; and such date shall not be earlier than six calendar months after the date on which the notice is given.

(2) Where the owner is a tenant the council shall also give notice to the person in receipt of the rent reserved under the lease under which the owner holds as tenant that they require to hire compulsorily the lands specified in such notice.

6. On receipt of the particulars of the interest of an existing tenant, the council shall within twenty-one days give notice to the tenant, stating whether the council desire to extinguish the interest of such tenant or to hire the land subject to such interest. Any interest of an existing tenant which is extinguished under the powers conferred by a compulsory order shall be extinguished upon, and by reason of, the commencement of the tenancy of the council.

7.—(1) An existing tenant whose interest in the land is extinguished upon, and by reason of, the commencement of the tenancy of the council shall be entitled to recover from the council compensation for the value of his interest in the land and for any just allowance which ought to be made to him by an incoming tenant for any loss or injury which the existing tenant may sustain.

(2) If any person claim compensation in respect of any unexpired term or interest under any lease of lands by the order authorised to be hired, the council may require such person to produce the lease in respect of which such claim is made, or sufficient evidence thereof, and if, after demand made in writing by the council, such lease, or such evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

8. If the owner of land authorised by a compulsory order to be hired is unable, except under powers conferred by these regulations, to lease the land for the term and on the conditions for and on which the council are so authorised to hire the land, the rent to be paid by the council shall be determined by a valuer appointed by the Board.

9. If an existing tenant is unable, except under powers conferred by these regulations, to dispose of the interest created by the lease under which he holds and to give an absolute discharge for the compensation for such interest, the amount payable by the council to the existing tenant or any person claiming through him in respect of such interest or in respect of improvements executed on the land or otherwise, and, where part only of the holding is hired, the rent to be paid for the residue of the holding during the remainder of the term for which the holding is held, shall be determined, as in default of agreement, in manner provided by paragraph 3 of Part II. of the First Schedule to the Act of 1907.

10. If the council cannot after diligent inquiry ascertain the owner or existing tenant, or if for twenty-one days after the giving of such notice to treat to the owner or existing tenant as is required by these regulations he fail to state the particulars demanded by the notice, or fail to treat with the council in respect of his interest, or if the owner or the existing tenant do not agree with the council as to any matter which under paragraph 3 of Part II. of the First Schedule to the Act of 1907 is in default of such agreement to be determined by a valuer appointed by the Board, the council may apply to the Board for the appointment of a valuer, who shall determine the matters referred to in the said paragraph, or such of them as shall not have been determined by agreement.

11. If the land authorised to be compulsorily hired is held by the owner subject to any reservation or exception or easement from which the council require that the land when leased to the council shall be exonerated during the existence of the lease, any person injuriously affected by the exoneration of the land from such reservation or exception or by the extinguishment of the easement effected by the lease to the council shall be entitled to recover

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compensation for the injury from the council, and the amount of the compensation shall in default of agreement between such person and the council be determined by a valuer appointed by the Board.

12. In determining the rent to be paid by the council for land authorised to be compulsorily hired, the interest of any existing tenant and the existence of any reservation or exception or easement affecting the land shall be taken into consideration, and the land shall be valued as subject to such interest, reservation, exception, or easement.

13.—(1) In determining the rent to be paid for land authorised to be compulsorily hired, regard shall be had by the valuer not only to the value of the land to be hired, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of such owner, or by reason of such other land being otherwise injuriously affected by the exercise of the powers conferred on the council by the compulsory order, or by the Small Holdings Acts, 1892 and 1907, or the Allotments Acts, 1887 to 1907, as the case may be.

(2) Every existing tenant shall be entitled to receive from the council compensation for the damage done to him in his tenancy by reason of the severance of the land to be hired from land which is held by such tenant and is not required to be hired.

14.—(1) If the land authorised to be compulsorily hired is land of copyhold or customary tenure which cannot be leased by the owner for such a lease as is authorised by the compulsory order except with a licence of the lord of the manor of which the land is held, and the owner shall not obtain such licence before the execution of the lease, this shall be taken into consideration in determining the rent payable by the council, and the lord of the manor shall be entitled to recover compensation from the council for any loss sustained by reason of the lease being under these regulations made valid and effectual without a licence, and the amount of the compensation shall in default of agreement between the lord and the council be determined by a valuer appointed by the Board.

(2) Every such lease shall be entered on the rolls of the manor in every case in which by the custom of the manor such a lease granted with the licence of the lord is required to be so entered; and the steward of the manor shall cause such lease to be so entered, and shall give to the council a certificate of such entry on payment to such steward of the accustomed fees, or, if there be no accustomed fees, on payment of such sum as may in default of agreement be adjudged by a court of summary jurisdiction, on the application of such steward or the council, to be payable in respect of such entry.

15.—(1) As soon as the amount of the rent to be paid by the council for the land proposed to be compulsorily hired, and the amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise, have been determined, so far as the same can be determined before the tenancy of the council commences, the owner shall on the application of the council execute a lease of the land in accordance with the order, subject only to the interest of any existing tenant which the council have given notice that they do not desire to extinguish, and to any reservation, exception, or easement subject to which the land is to be hired, and if the owner refuses or after notice in writing by the council fails within one month to execute the lease, or if the owner of the land cannot after diligent inquiry be ascertained by the council, the council shall execute the lease in duplicate, and shall forward one copy to the owner, if he can be found, and a lease so executed shall take effect as if it had been duly executed by the owner.

(2) A lease executed by the owner, or by the council under this regulation, shall be binding on and enure for the benefit of all persons interested in the land hired, and shall not cause any forfeiture of the land, or of any land held therewith, or create any right of entry on any such land, or any right of action for breach of a covenant not to assign, or like covenant.

16. The lease to the council shall, when executed in accordance with these regulations, and subject as hereinafter provided, take effect as from the date specified by the council in the notice to treat given by the council to the owner

Appendix II. of the land, and in such case the council shall on the date so specified be entitled to enter on the land, subject to the interest of any existing tenant which is not to be extinguished by the hiring;

Provided that this regulation is subject to the power of the council under sub-section (8) of section 26 of the Act of 1907 to withdraw such notice to treat.

17.—(1) Costs reasonably incurred by the owner in connection with the preparation and execution of the lease and any counterpart and costs reasonably incurred by the owner or an existing tenant in furnishing any particulars of his estate and interest required by notice under these regulations, or otherwise required by the council, shall be paid by the council to the owner or tenant as the case may be.

(2) If the council and the party entitled to any such costs do not agree as to the amount thereof, such costs shall be taxed by one of the Taxing Masters of the High Court, upon an order of the court to be obtained upon petition in a summary way by either of the parties; and the council shall pay what the said Master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the Court, and the expense of taxing such costs shall be borne by the council unless upon such taxation one-sixth part of the amount of such costs be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said Master, and deducted by him accordingly in his certificate of such taxation.

18. If in any case the council are authorised by a compulsory order and these regulations to enter upon and hold any land authorised to be compulsorily hired, and the owner or occupier of any such lands or any other person refuses to give up the possession thereof, or hinders the council from entering upon the same, a court of summary jurisdiction, on complaint made by the council, may require the owner or occupier of such land or other person to deliver possession of the same to the council or permit them to enter thereon; and any order made under these provisions may be enforced as provided by section 34 of the Summary Jurisdiction Act, 1879.

19. A valuer may be appointed by the Board for the purpose of determining all matters required by the Act of 1907 to be determined by a valuer on the application of the council or the owner, or any existing tenant whose interest is to be extinguished by the hiring.

20. The valuer shall within one month after his appointment, or within such extended time as the Board shall allow, make and sign a valuation of all matters referred to him for valuation which are in his opinion capable of being ascertained at the date of the valuation, and shall within one month after the commencement of the tenancy of the council, or within such extended time as the Board shall allow, make and sign a valuation of all matters referred to him for valuation which are not determined by the previous valuation.

21. If a valuer refuses to act or becomes incapable of acting or dies before completing the valuation of all matters referred to him for valuation, the Board may appoint another valuer to determine all matters which have not been duly determined by a valuation made and signed by the previous valuer.

22. Every valuation made by a valuer shall be duly stamped by him and sent as soon as possible to the council, and a copy shall at the same time be sent to the owner and any existing tenant affected by the valuation.

23.—(1) Before a valuer enters on his valuation he shall in the presence of a justice of the peace make and subscribe the declaration following (that is to say):—

"In the matter of the compulsory hiring by the Council of of land at .

"I, *A. B.*, do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation referred to me.

"*A. B.*

"Made and subscribed in the presence of ."

(2) If any valuer shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

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(3) The declaration shall be annexed to the valuation, and be preserved with the valuation by the council, who shall at all times produce the valuation and declaration on demand to the owner of the lands comprised in the valuation or to any other party interested therein.

24.—(1) Any compensation, other than rent, payable by the council in respect of the compulsory hiring, including any compensation payable in respect of the interest of an existing tenant which is extinguished by such hiring, shall be payable by the council in manner provided by these regulations on the execution of the lease, or if payable in respect of any matter not then determined, on the date when it is duly determined.

(2) Subject to any provision in the compulsory order and these regulations, compensation so payable by the council shall be paid on demand to the owner, or the existing tenant, as the case may be.

25. Subject to any provision in the compulsory order relating to mines and minerals, there shall, unless the owner and the council otherwise agree, be excepted and reserved out of the lease all the mines and minerals, metals, ores, and other substrata, whether of coal, stone, clay, sand, or any other metalliferous or mineral substance or produce whatsoever, whether opened or unopened, worked or unworked, within or under the hired land (all which are hereinafter collectively referred to as "the said mines and minerals"); with full liberty and power for the persons entitled to the said mines and minerals at all times during the lease by underground workings only to win, work, and carry away the whole of the said mines and minerals, and also to carry away the produce of any other mines; nevertheless making reasonable compensation for any damage or subsidence which may be occasioned to any building on the land hired by reason of such working and carrying away of the said mines and minerals as aforesaid or the exercise of the powers to be reserved as aforesaid, such compensation to be settled in case of dispute by a single arbitrator in accordance with the Agricultural Holdings (England) Acts, 1883 to 1906.

26. Except as in these regulations expressly provided, a valuer shall not require any person interested in a valuation to produce to him, or give him access to, any document of title.

PART III.

GENERAL.

27.—(1) Every notice required to be given by the council to an owner, existing tenant, or other person interested in land proposed or authorised to be hired, shall either be served personally on such person or sent by post to or left at his usual place of abode in the United Kingdom, if any such can after diligent inquiry be found, and in case any such person shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall be sent by post to or left with any agent ordinarily receiving the rents of the land on behalf of such person, and a copy thereof shall also be sent by post to or left with the occupier of the land to which such notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of such land.

(2) If an owner, existing tenant, or other person interested be a corporation aggregate such notice shall be sent by post to or left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found shall be sent by post to or served on some principal officer, if any, of such corporation, and such notice shall also be sent by post to or left with the occupier of the land to which it relates, or if there be no such occupier, shall be affixed upon some conspicuous part of such land.

28. In these regulations, unless the context otherwise requires—

"Act of 1907" means the Small Holdings and Allotments Act, 1907;

"Board" means the Board of Agriculture and Fisheries;

"Owner" in relation to any land proposed or authorised to be hired means the person who by himself or his agent is in actual possession, or receipt of the rents and profits of the land (except a tenant thereof under a lease for a term no greater than the term for which the land is proposed or authorised to be hired), and that without regard to the real amount of interest of such person;

Appendix II.

"Existing tenant" in relation to any land proposed or authorised to be hired means a tenant thereof under a lease for a term no greater than the term for which the land is proposed or authorised to be hired;

"Lease" includes an agreement for a lease;

"Compulsory order" means an order under the Act of 1907 which authorises land to be compulsorily hired;

"Land" includes stints and other alienable common rights of grazing.

29. A compulsory order shall incorporate these regulations, but shall not, unless therein otherwise expressly stated, incorporate any of the provisions of the Lands Clauses Acts or of sections 77 to 85 of the Railways Clauses Act, 1845, except so far as such provisions have been incorporated with adaptations in these Regulations.

30. These regulations shall apply to a compulsory hiring by the Small Holdings Commissioners acting in default of a county council, with the substitution of those Commissioners for the council, and with the substitution of the Lord Chief Justice of England for the Board as regards any appointment of an arbitrator or valuer.

31. The compulsory order and these regulations shall not extend and apply to

Any land belonging to His Majesty the King, his heirs and successors in the right of Crown, or in right of the Duchy of Lancaster; nor to

Any land belonging to the Duchy of Cornwall; nor to

Any land subject to rights of common.

In witness whereof the Board of Agriculture and Fisheries have hereunto affixed their official seal this twenty-fourth day of March, nineteen hundred and eight.

(L.S.) T. H. ELLIOTT, *Secretary.*

APPENDIX.

FORM OF ORDER FOR COMPULSORY HIRING.

1. The (*x*) are hereby empowered to put in force as respects the land described in the draft lease set forth in the schedule hereto the powers of compulsory hiring conferred by the (*y*) , subject to the provisions of those Acts, and to the Regulations, 1907, and to the terms of this order.

2. The tenancy of the council shall commence either on the [*twenty-fifth day of March*] or the [*twenty-ninth day of September*] (*z*).

3. [*Where the land is glebe land or other land belonging to an ecclesiastical benefice insert the following paragraph.*] Any sum payable by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the Ecclesiastical Leasing Acts of land belonging to a benefice.

4. The powers conferred by this order shall cease after the expiration of one year from the date of the confirmation of this order by the Board of Agriculture and Fisheries, unless such period is extended by that Board.

SCHEDULE TO FORM OF ORDER FOR COMPULSORY HIRING.

This schedule shall contain a draft of the lease under which it is proposed that the land shall be authorised to be acquired by the council, setting out all the proposed terms and conditions except the date of the commencement of the tenancy and the rent.

The lease shall contain covenants by the council to cultivate the land in a proper manner and to pay to the landlord at the determination of the tenancy, on the council quitting the land, compensation for any depreciation of the land by reason of any failure by the council, or any person deriving title under them, to observe such covenants, or by reason of any user of the land by the council or such person as aforesaid, and, unless otherwise agreed, a covenant by the council to keep the buildings and premises demised in repair.

(*x*) Insert "County Council of ," or "County Council of acting on behalf of the Parish Council" [*or* "Meeting"] or "Mayor, Aldermen, and Burgesses of the Borough of ," or " District Council."

(*y*) Insert "Small Holdings Acts, 1892 and 1907," or "Allotments Acts, 1887 to 1907."

(*z*) The dates shall be those usually adopted in the locality for the commencement of agricultural tenancies.

The lease shall not authorise the breaking up of pasture unless the council are prepared to prove to the satisfaction of the Board of Agriculture and Fisheries that it can be so broken up without depreciating the value of the land, or that the circumstances are such that small holdings cannot otherwise be successfully cultivated. Appendix II.

The lease shall also provide that, except with the consent of the landlord, the council shall not fell or cut timber or trees, or take, sell, or carry away any minerals, gravel, sand, or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting the land for small holdings [allotments], and except upon payment of compensation for minerals, gravel, sand, or clay so used.

The lease shall also provide that any question as to the amount of compensation payable by the council under the lease shall be determined by a single arbitrator in accordance with the Agricultural Holdings (England) Acts, 1883 to 1906.

SMALL HOLDINGS AND ALLOTMENTS (COMPULSORY PURCHASE) REGULATIONS, 1908.

(Dated 24th March, 1908.)

The Board of Agriculture and Fisheries in pursuance of the provisions of the Small Holdings and Allotments Act, 1907, do hereby make the following regulations :—

PROCEDURE FOR OBTAINING ORDER FOR COMPULSORY PURCHASE.

1.—(1) A compulsory order submitted by a council to the Board of Agriculture and Fisheries (in these regulations referred to as "the Board") shall be in the form set forth in the appendix to these regulations or to the like effect; provided that any order so submitted may be modified by the Board after notice of the intended modification to the council and to those persons interested in the land who, in the opinion of the Board, would be affected thereby, and after consideration of any objection thereto presented to the Board within the time prescribed by such notice.

2.—(1) When a council propose to purchase land compulsorily under the Small Holdings and Allotments Act, 1907, the council, not less than one calendar month before they submit the compulsory order to the Board, shall publish the order by means of a notice, containing such particulars as are prescribed by this regulation, inserted as an advertisement in one or more newspapers circulating in the locality, and by furnishing a copy of the order (except any plan annexed to or referred to in the order) free of charge to any person interested in the land who shall apply for the same. The council shall also give notice of the order, containing such particulars as are required by this regulation, to the Board and to each owner, lessee, and occupier of the land proposed to be purchased, or to such of them as shall be known to the council.

(2) Every notice under this regulation shall contain the following particulars :—

(a) the purpose for which the land is proposed to be purchased;
(b) the quantity, description, and situation of the land and the names of the reputed owners, lessees, and occupiers thereof;
(c) the place where copies of the order (except any plan annexed to or referred to in the order) may be obtained free of charge by any person interested in the land;
(d) the place where the plan (if any) annexed to or referred to in the order may at all reasonable times, until the order is submitted to the Board, be inspected by or on behalf of any person interested in the land.

(3) Every notice shall also state that any objection must be presented to the Board, and every notice sent to an owner, lessee, or occupier shall state the period within which an objection by him may be presented in accordance with these regulations. A notice may also state that a copy of every objection should be sent to the clerk to the council.

(4) If the council is a county council acting on behalf of a parish council or parish meeting the notice shall so state and give the name of the parish.

3. The period within which an objection to a compulsory order may be

Appendix II.

presented to the Board by a person interested in the land to which the order relates shall be the period of one calendar month from and after the date on which notice of the order is sent to him, or if no notice is sent to him, in that case from and after the date of the latest advertisement of a notice of the order.

4. Notice of the confirmation of the order shall be given by the council as soon as practicable to each owner, lessee, and occupier of the land authorised to be purchased, and a copy of the order and of any plan annexed to or referred to in the order shall be furnished by the council to any person interested in the land on application by such person and payment by him of the reasonable cost of preparing such copy.

5.—(1) Every notice required to be given by the council to an owner or other person interested in land proposed or authorised to be purchased, shall either be served personally on such person or sent by post to or left at his usual place of abode in the United Kingdom, if any such can after diligent inquiry be found, and in case any such person shall be absent from the United Kingdom or cannot be found after diligent inquiry, shall be sent by post to or left with any agent ordinarily receiving the rents of the land on behalf of such person, and a copy thereof shall also be sent by post to or left with the occupier of the land to which such notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of such land.

(2) If an owner or other person interested be a corporation aggregate, such notice shall be sent by post to or left at the principal office of business of such corporation, or if no such office can after diligent inquiry be found, shall be sent by post to or served on some principal officer, if any, of such corporation, and such notice shall also be sent by post to or left with the occupier of the land to which it relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of such land.

6. Where a council propose to purchase compulsorily the estate and interest of a lessee only, the order shall so state, and these regulations shall apply with the necessary modifications.

7. In these regulations, unless the context otherwise requires—

"Owner" in relation to any land proposed or authorised to be purchased means the person who by himself or his agent is in actual possession, or receipt of the rents or profits, of the land (except a lessee) and that without regard to the real amount of interest of such person;

"Lessee" includes a tenant holding under an agreement for a lease;

"Compulsory order" means an order under the Small Holdings and Allotments Act, 1907, which authorises land to be compulsorily purchased;

"Land" includes stints and other alienable common rights of grazing.

8. These regulations shall apply to a compulsory purchase by the Small Holdings Commissioners acting in default of a county council with the substitution of those Commissioners for the council.

In witness whereof the Board of Agriculture and Fisheries have hereunto affixed their Official Seal this twenty-fourth day of March, nineteen hundred and eight.

(L.S.) T. H. ELLIOTT, *Secretary*.

APPENDIX.

NOTE.—See the subsequent Order of 7th December, 1908, *infra*.

SMALL HOLDINGS AND ALLOTMENTS (COMPULSORY PURCHASE) REGULATION, 1908 (No. 2).

(Dated 7th December, 1908.)

The Board of Agriculture and Fisheries in pursuance of the provisions of the Small Holdings and Allotments Act, 1908, do hereby make the following regulations:—

FORM OF ORDER FOR COMPULSORY PURCHASE.

For the purposes of an order for compulsory purchase made or confirmed on or after the first day of January, nineteen hundred and nine, the appendix

to these regulations shall be substituted for the appendix to the Small Holdings and Allotments (Compulsory Purchase) Regulations, 1908. **Appendix II.**

In witness whereof the Board of Agriculture and Fisheries have hereunto affixed their official seal this seventh day of December, nineteen hundred and eight.

(L.S.) T. H. ELLIOTT, *Secretary.*

APPENDIX.

1. The (*a*) are hereby empowered for the purpose of providing (*b*) to put in force as respects the [several] land[s] described in the schedule hereto the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, but subject to the terms of the Small Holdings and Allotments Act, 1908, and this Order.

2. This order shall take effect as if it incorporated, subject to the necessary adaptations, the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board of Agriculture and Fisheries (*c*), who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of these Acts with respect to arbitration shall, subject to the provisions of the First Schedule to the Small Holdings and Allotments Act, 1908, apply accordingly.

[*Here insert any provision for the continuance of an existing easement or the creation of a new easement over the land*[*s*].]

3. Nothing in this order as made or confirmed shall entitle the council, except with the further consent of the Board of Agriculture and Fisheries, to require any party to sell or convey part only of [any of] the [several] land[s] described in the schedule hereto if such party is willing and able to sell and convey the whole thereof.

4. [*Where the order applies to glebe land or other land belonging to an ecclesiastical benefice insert the following paragraph.*] Any sum agreed upon or awarded for the purchase of the land[s], or payable by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land[s] shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the Ecclesiastical Leasing Acts of land belonging to a benefice.

5. The powers conferred by this order shall cease after the expiration of one year from the date of the confirmation of this order by the Board of Agriculture and Fisheries, unless such period is extended by that Board.

Made by the (*a*) the day of 190 . [*Seal of the council.*]

or

Made on behalf of the (*a*) the day of 190 , by their Small Holdings and Allotments Committee.

[*Signature of clerk to the council.*]

SCHEDULE TO FORM OF ORDER FOR COMPULSORY PURCHASE.

[*Description of land*[*s*] *proposed or authorised to be purchased.*]

If severally described, number consecutively.

(*a*) Insert "County Council of ," or "County Council of , acting on behalf of the Parish Council" [*or* "Meeting"] or "Mayor, Aldermen, and Burgesses of the Borough of ," or " District Council."

(*b*) Insert "small holdings," or "allotments," as the case may be.

(*c*) Substitute "Lord Chief Justice of England" for "Board of Agriculture and Fisheries" if the order empowers the Small Holdings Commissioners to purchase.

Appendix II.

THE SMALL HOLDINGS AND ALLOTMENTS (COSTS) RULES, 1910. DATED MARCH 5, 1910, MADE BY THE BOARD OF AGRICULTURE AND FISHERIES, WITH THE CONCURRENCE OF THE LORD CHANCELLOR, PURSUANT TO PARAGRAPH (6) OF PART I. OF THE FIRST SCHEDULE TO THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1908 (8 EDW. 7, C. 36).

The following rules, and the scales of costs contained therein, shall apply to the allowance and taxation or determination as against a council of all costs and charges of a claimant in an arbitration under the First Schedule to the Act.

1. Where the compensation awarded by the arbitrator to the claimant does not exceed the sum specified in the first column of the Scale No. 1 herein contained, the sum payable to the claimant for his costs of the arbitration shall be the sum specified in the second column of such scale, which sum shall include and cover all disbursements, except for the attendances of witnesses, for which attendances the sums specified in the third column of such scale shall be allowed. No charge for briefs to, or attendance of, counsel shall be allowed.

2. Where the compensation awarded by the arbitrator exceeds the sum of three hundred pounds, but does not exceed the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed, and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 2 herein contained, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

3. Where the compensation awarded by the arbitrator exceeds the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed, and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 3 herein contained, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

4. So much of the First Schedule to the Arbitration Act, 1889, as provides that the arbitrator may award costs to be paid as between solicitor and client, shall not apply to an arbitration to which these rules apply. In any case in which the arbitrator determines the amount of costs to be paid to the claimant in the arbitration, these rules and the scales herein contained, shall apply to and govern such determination of costs by the arbitrator.

5. These rules shall not apply to an arbitration in which an arbitrator has been appointed before the rules come into operation.

6. Nothing in these rules shall authorise an arbitrator to hear counsel or expert witnesses, except in such cases as the Board of Agriculture and Fisheries direct, and if counsel or expert witnesses are heard by an arbitrator without such direction, no costs shall be allowed in respect thereof.

7.—(1) If, having regard to the nature or importance of the case, the interests of the parties, the general conduct of the proceedings, and the skill, labour, and responsibility involved, the taxing officer shall on special grounds consider the costs or allowances provided by any of the scales inadequate, he may make such further or increased allowances as he shall in his discretion consider reasonable.

(2) The taxing officer may in any case where the owner or claimant is not represented by a solicitor on the arbitration make such allowance as he may consider reasonable towards the charges or expenses incurred by the owner or claimant in connection with the arbitration, but not exceeding in the aggregate the maximum amount which could otherwise have been allowed under the relevant scale.

8. These rules and the scales of costs contained herein shall not apply to the fees or remuneration properly payable to or charged by the arbitrator, which fees, if and when paid by the claimant, shall be recoverable by him from the party who is liable to pay the same.

9. In these rules and the scales of costs contained herein:

(1) "The Act" means the Small Holdings and Allotments Act, 1908.

(2) "The arbitrator" means an arbitrator appointed under the Act.

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(3) "Taxing officer" includes the arbitrator when costs are determined by him.

(4) "Council" includes any Commissioner acting in default of a council.

10. These rules shall come into operation on the tenth day of March, 1910, and may be cited as the Small Holdings and Allotments (Costs) Rules, 1910.

SCALE No. 1.

Scale of fixed costs where the compensation awarded does not exceed £300.

Compensation Awarded.	Amount of Costs other than for Witnesses. £ s. d.	Costs of Attendance of Witnesses. £ s. d.
Any sum not exceeding fifty pounds	3 3 0	2 2 0
Any sum exceeding fifty pounds, but not exceeding one hundred pounds	5 5 0	3 3 0
Any sum exceeding one hundred pounds, but not exceeding three hundred pounds :— For every fifty pounds or part of fifty pounds exceeding one hundred pounds the following sums in addition to those prescribed for compensation which exceeds fifty pounds	2 2 0	1 1 0

SCALE No. 2.

Costs where the compensation awarded exceeds £300 but does not exceed £500.

(a) The amount payable to the claimant for the costs of the arbitration shall be the sum of £20, which sum shall include all charges and disbursements of every kind, except those hereinafter specially mentioned.

*(b) In addition to the said sum of £20, there shall be allowed to the claimant the charges and expenses of one expert witness for qualifying and giving evidence as to the value of the claimant's lands, or interest in land, or the amount of compensation to which the claimant is entitled: which charges and expenses shall be taxed and allowed in accordance with the provisions of Scale 3, hereinafter contained.

*(c) If counsel is employed by the claimant, there shall be allowed to him, in addition, for preparing and delivering briefs to and obtaining the attendance of counsel, such fees as, having regard to all the circumstances of the case, the taxing officer shall think fit.

SCALE No. 3.

Scale of costs and allowance where the compensation exceeds five hundred pounds :—

	£	s.	d.
1. Instructions for claim and attendances on owner or claimant in respect thereof	1	1	0
2. Correspondence and attendance on the clerk to the council or council's solicitor thereon, including drawing and copy claim	1	1	0
*3. Attending on each witness (of two witnesses) instructing him to qualify and subsequently perusing his report, or if the arbitrator is a surveyor on one witness only	0	13	4
4. Attending on the arbitrator and on the clerk to the council or council's solicitor arranging appointment for the day of hearing	0	13	4
5. Notice to each witness to attend	0	5	0
6. If a view is reasonably necessary attendances on the arbitrator and the clerk to the council or council's solicitor arranging for view . . .	0	13	4
7. Attending view with them	3	3	0
8. Paid travelling expenses			
*9. If counsel employed, instructions to counsel to attend view	0	6	8
*10. Paid his fee and clerk	5	10	0
11. Instructions for attending before the arbitrator and to conduct the claimant's case	2	2	0
*12. If counsel employed in lieu of last item instructions for brief	2	2	0
*13. Drawing case and minutes of evidence, at per folio, 1*s.*; and if counsel attending, brief copy for counsel at per folio, 4*d.*			
*14. Paid counsel's fee			
*15. Attending him	0	6	8

* See Rule 6 as to employment of counsel and expert witnesses.

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		£	s	d.
*16.	Paid counsel's conference fee	1	6	0
	Ditto ditto (if a leader)	2	7	0
*17.	Attending to appoint and on conference	1	0	0
18.	Solicitor attending reference and conducting case, case completed on each side (solicitor and clerk)	5	5	0
19.	If reference not held in town in which the solicitor carries on business, for hotel expenses of solicitor	1	1	0
	Ditto ditto of clerk	0	15	0
	(And for travelling expenses the sum actually paid.)			
20.	If reference not concluded, for each subsequent day the same charges.			
*21.	If counsel in attendance, solicitor attending each day on reference . .	3	3	0
22.	And if not in solicitor's town, for hotel expenses (and travelling expenses actually paid)	1	1	0
*23.	Paid witnesses (according to the scale of allowances in the Supreme Court Taxing Office).			
24.	Drawing bill of costs and copy for taxing, at per folio, 8*d*.			
25.	Copy for the clerk to the council or council's solicitor, at per folio, 4*d*.			
26.	Notice of taxing	0	4	0
27.	Attending taxing	0	13	4
28.	Paid taxing (the fee payable in the Supreme Court Taxing Office on taxing costs).			
29.	Letters and messengers	1	1	0
30.	In agency cases for correspondence between solicitor and London agent .	1	1	0

(L.S.) T. H. ELLIOTT,
Secretary of the Board of Agriculture and Fisheries.

I concur,
LOREBURN, *C.*
Dated the 5th of March, 1910.

* See Rule 6 as to employment of counsel and expert witnesses.

STOCK (ISSUE OF).

ORDER IN COUNCIL OF THE 26TH SEPTEMBER, 1891.

At the Court at Balmoral, the 26th day of September, 1891.

PRESENT :

The Queen's Most Excellent Majesty in Council.

WHEREAS the Local Government Board have, in virtue of the powers conferred upon them by the "Public Health Acts Amendment Act, 1890," made regulations applying to the creation, issue, transfer, and redemption of, and other dealings with, any stock which any urban sanitary authority under the Public Health Acts (having adopted Part V. of the said Public Health Acts Amendment Act, 1890), either in that or in any other capacity, create, with the consent of the said Local Government Board, under the said regulations, in exercise of any statutory borrowing power as defined in those regulations :

And whereas the said regulations have, as required by the said Public Health Acts Amendment Act, 1890, been laid before both Houses of Parliament for the period of thirty days, and no resolution has been passed by either House that such regulations ought not to be proceeded with :

Now, therefore, Her Majesty, having taken the said regulations (copy whereof is hereunto annexed) into consideration, is pleased, by and with the advice of Her Privy Council, to confirm, and doth hereby confirm the said regulations.

C. L. PEEL.

Appendix II.

PUBLIC HEALTH ACTS AMENDMENT ACT, 1890
(53 & 54 VICT. c. 59, s. 52).

REGULATIONS AS TO ISSUE OF STOCK.

WHEREAS by section 52 of the Public Health Acts Amendment Act, 1890 (which section forms Part V. of the said Act) [*the section* (*see* ante, *p.* 867), *is recited*].

And whereas it is provided by the said Act that Part V. thereof may be adopted by any urban sanitary authority under the Public Health Acts:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us by the above-cited section, do hereby order and prescribe as follows:—

The regulations hereinafter contained shall, from and after the confirmation thereof as aforesaid, apply to the creation, issue, transfer, and redemption of, and other dealings with, any stock which any urban sanitary authority (having adopted the said part of the said Act), either in that or in any other capacity, create with our consent under these regulations, in exercise of any statutory borrowing power as defined in Article 1.

PRELIMINARY.

ART. 1.—In these regulations— Interpretation.

The local authority means the mayor, aldermen, and burgesses of the borough, acting by the council of the borough, or the local board for the Local Government district, or the improvement commissioners for the Improvement Act district, as the case may be, exercising under these regulations, with the consent of the Local Government Board, the power of borrowing by the creation of stock; "The local authority."

The district means the borough, or Local Government district, or Improvement Act district, according as the local authority is the mayor, aldermen, and burgesses, or the local board, or the improvement commissioners; "The district."

Stock, unless the context otherwise requires, means stock created by the local authority under these regulations; "Stock."

Rate includes water rents, gas rents, and charges for supply of water or gas, or the hire of meters or fittings connected therewith; "Rate."

The Board means the Local Government Board; "The Board."

The Bank of England means the governor and company of the Bank of England; "The Bank of England."

Revenues of the local authority includes the revenues of the local authority from time to time arising from any land, undertakings, or other property for the time being of the local authority, and rates leviable by or on the precept of the local authority. "Revenues of the local authority."

Statutory borrowing power means any power, whether or not coupled with a duty, of borrowing, or continuing on loan, or re-borrowing money, or of redeeming or paying off, or creating or continuing payment of or in respect of any annuity, rent-charge, rent, or other security representing or granted in lieu of consideration money, for the time being existing under any Act of Parliament, public or local, passed or to be passed, or under any Provisional Order confirmed by Act of Parliament passed or to be passed, or under these regulations, or under any Order or sanction of any Government department made or given, or to be made or given, by authority of any Act of Parliament passed or to be passed; "Statutory borrowing power."

Statutory security means any security in which trustees are for the time being by or under any Act of Parliament passed or to be passed authorised to invest trust money, except any security of the local authority, and any other mortgage, bond, debenture, stock, annuity, rent-charge, rent, or other security authorised by or under any Act of Parliament passed or to be passed, or under these regulations, of any local authority as defined by section 34 of the Local Loans Act, 1875, except as before excepted, and except securities payable to bearer; "Statutory security."

Interest includes instalments of an annuity and half-yearly or other payments of or in respect of a rent-charge, rent, or other security. "Interest."

CREATION AND CHARGE OF STOCK.

Creation of stock.

ART. 2.—(1) Where the local authority have for the time being any statutory borrowing power, and the Board have by order (hereinafter called the Consent Order) consented to the exercise of such power by the creation of stock, then, subject and according to the provisions of these regulations and of the Consent Order, the local authority may from time to time by resolution exercise the power by creation of redeemable stock, to be from time to time issued for such amount within the limit of the power, at such price, being not lower than ninety-five per centum, to bear such half-yearly or other dividends, and to be so transferable, that is to say, in books or by deed as the local authority by the resolution direct: Provided that, subject to any regulations which the Board may make amending these regulations, all stock at any time and from time to time so created shall be created on and subject to such terms and conditions as that the same shall form one and the same class of stock, bearing one and the same rate of dividend, and shall become redeemable as hereinafter provided after the expiration of the same period from the first creation of the stock.

(2) All stock at any time and from time to time so created shall rank equally without any priority or preference by reason of any precedence in the date of any statutory borrowing power, or in the date of creation of any portion of stock, or in the date of issue of any portion of stock, or on any other ground whatsoever, and shall (unless otherwise expressed in the resolution for creation of the stock) also rank equally with all other securities of the local authority created or granted in pursuance of any statutory borrowing power at any time after the date of the first creation of any stock.

(3) After the expiration of such a period from the creation of the stock as the Board shall fix by the Consent Order, the stock shall be redeemable at par, at the option of the local authority, and within such a period (not exceeding sixty years) from the first creation of the stock as the Board shall fix by the Consent Order, the whole of the stock shall be redeemed or purchased and extinguished.

(4) Each resolution for creation of stock shall specify after what period the stock thereby created is redeemable at par, and within what period the stock is to be redeemed or purchased and extinguished.

(5) The stock shall be designated by such name as the local authority in the resolution for creation of the stock shall, with the approval of the Board determine.

Borrowing power to be exerciseable for actual sum raiseable.

ART. 3. The Consent Order of the Board to the exercise of any statutory borrowing power of the local authority by the creation of stock shall be construed to authorise the local authority to create such an amount of stock and from time to time to issue such nominal amounts thereof as will, in the aggregate, according to the price of issue, produce the actual amount of money for the time being lawfully raiseable by the local authority under that power, or some portion, mentioned in the Consent Order, of that actual amount, or (as the case may be) the actual amount of money properly payable by the local authority as consideration on payment of or redemption by the local authority of any mortgage, bond, debenture, stock, annuity, rent-charge, rent, or other security granted or created by the local authority in respect of the payment off or redemption of which consent was given by the Consent Order.

Charge of stock.

ART. 4.—(1) All stock for the time being issued and the dividends thereon shall be the same and are by virtue of these regulations charged indifferently on all the revenues of the local authority.

(2) The dividends for the time being payable on all stock shall rank equally with interest on all other securities of the local authority created or granted in pursuance of any statutory borrowing power at any time after the date of the first creation of any stock, and the same dividends and interest shall, subject to all charges existing at that date, be the first charge on all the revenues of the local authority.

CONSOLIDATION OF LOANS.

Consolidation of loans.

ART. 5. The Board may, in the Consent Order, approve a scheme for the consolidation for the purpose of the repayment of all or any of the loans

raised by the local authority under all or any of the statutory borrowing powers of the local authority, whether existing at the date of these regulations or not, and any such scheme shall fix the period or periods within which the loans so consolidated shall be discharged, and for that purpose may extend or vary any period allowed for the payment off of such loans by the statutory borrowing powers: Provided that the Board, in approving the period or periods as aforesaid, shall have due regard to the amounts of the several loans and the periods allowed for the payment off of such loans respectively by the statutory borrowing powers.

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DIVIDENDS FUND.

Establishment of dividends fund.

ART. 6. For payment of dividends on the stock there shall be established and formed a fund called the stock (dividends) fund; and in these regulations the stock (dividends) fund is referred to as the dividends fund.

Contributions to dividends fund.

ART. 7.—(1) In each year the local authority shall pay into the dividends fund a sum or sums equal to the aggregate amount of all dividends payable in that year on the stock.

(2) They shall provide the sum or sums aforesaid by contributions from the several revenues of the local authority, if any, specifically made liable to provide the same by or under any Act of Parliament, or any Provisional Order confirmed by Act of Parliament, or any Order or sanction of any Government department, or by any resolution of the local authority having reference to those respective statutory borrowing powers; and if, as regards any statutory borrowing power, there is no such specific liability, then from the several revenues out of which interest would have been payable on money borrowed by the local authority under that power if that money had been raised and remained secured otherwise than by stock, and in default thereof, or subject thereto, they shall provide the same, if the district is a borough, out of the borough fund and borough rate, or out of the district fund and general district rate, or if there is no district fund or general district rate, out of such other rate as the local authority, having regard to the provisions of these regulations and of the Consent Order and to the objects for which the statutory borrowing power was exercised, may consider equitable; and if the district is not a borough they shall provide the same out of the district fund and general district rate, or, if there is no such fund and rate, out of such other rate as the local authority, having regard as aforesaid, may consider equitable.

(3) The amounts of those several contributions (subject to any payment in reduction thereof authorised by these regulations) shall be the sums ascertained to be required in that behalf by apportionment of that aggregate amount of dividends among the several revenues of the local authority according to the amount of stock, the dividends whereon are properly payable out of such revenues respectively.

Raising of contributions to dividends fund.

ART. 8.—(1) The local authority shall from time to time, in order to raise the amounts of the several contributions to the dividends fund as aforesaid out of the several revenues of the local authority, do all such acts, exercise all such powers, collect all such money, and make and levy all such rates as they lawfully can or ought to do, exercise, collect, make, and levy for the purposes of or in relation to the respective statutory borrowing powers in exercise whereof the several portions of stock are issued.

(2) If by reason of any limit of rate, or for any other reason, there is a deficiency on any revenue in respect of any required contribution, the local authority shall advance the amount of the deficiency, if the district is a borough out of the borough fund and borough rate, or out of the district fund and general district rate, or, if there is no district fund or general district rate, out of such other rate as the local authority, having regard to the provisions of these regulations, and of the Consent Order and to the objects for which the statutory borrowing power was exercised, may consider equitable; and if the district is not a borough they shall advance the same out of the district fund and general district rate, or, if there is no such fund and rate, out of such other rate as the local authority, having regard as aforesaid, may consider equitable.

(3) The amount so advanced shall be a debt due from the revenue on which the deficiency existed to the fund or rate out of which the advance is made, and interest shall be payable thereon until repayment at the rate to be deter-

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Payment of rents, etc., to dividends fund.

ART. 9. (1) Unless the Board otherwise direct, the local authority shall pay into the dividends fund and shall carry to the proper separate account forming part of the general account of the dividends fund, the rents and profits of any land and other property of the local authority acquired by them for the purposes of any undertaking or purpose for or in respect of which any statutory borrowing power is exercised by them by the issue of the stock, and not being wholly or in part otherwise appropriated or required to be otherwise applied.

(2) The local authority before making any payment into the dividends fund under this article, may deduct from the rents and profits to which this article applies any costs and expenses properly incurred by the local authority in or about the collection and receipt of such rents and profits.

Application of dividends fund.

ART. 10. The local authority shall, from time to time, apply the dividends fund in paying the dividends on the stock.

Account of dividends fund.

ART. 11. As parts of the general account of the dividends fund the local authority shall keep separate accounts, distinguishing and showing, in relation to each undertaking or purpose for or in respect of which any statutory borrowing power is exercised by them by the issue of the stock,—

(1) All money from time to time paid into the dividends fund as receipts from rents and profits of any land and other property of the local authority so as aforesaid acquired in respect of that undertaking or purpose and not otherwise appropriated or required to be applied; and

(2) All money paid into the dividends fund as contributions from the revenues of the local authority in respect of dividends on the several amounts of stock chargeable to that undertaking or purpose; and

(3) All money being unclaimed dividends paid into the dividends fund as hereinafter provided and allocated to that undertaking or purpose.

Application of income in reduction of contributions to dividends fund.

ART. 12. Where any money is standing on a separate account in the dividends fund, being money paid into that fund as rents and profits of the land and other property of the local authority, or being other money properly paid into that fund otherwise than as contributions under Article 7 required for the payment of dividends, the local authority may, if they think fit, from time to time apply the same in reduction of such contributions out of the revenues of the local authority as are payable into the dividends fund in respect of the portions of stock comprised in the separate account on which the money is standing.

REDEMPTION FUND.

Establishment of redemption fund.

ART. 13. For redemption and extinction, or purchase and extinction, of the stock there shall be established and formed a fund called the stock (redemption) fund; and in these regulations the stock (redemption) fund is referred to as the redemption fund.

Contributions to redemption fund for extinction of stock.

ART. 14.—(1) In each year the local authority shall pay into the redemption fund a sum or sums equal to the aggregate amount of all sums payable in that year for redemption and extinction, or purchase and extinction of the stock.

(2) They shall provide the sum or sums last aforesaid by contributions from the several revenues of the local authority, if any, specifically made liable to provide the same by or under any Act of Parliament, or any Provisional Order confirmed by Act of Parliament or any order or sanction of any Government department, or by any resolution of the local authority having reference to those respective statutory borrowing powers, and if as regards any statutory borrowing power there is no such specific liability, then from the several revenues out of which any yearly or other sums would have been payable towards a sinking fund for discharge, or towards payment off by instalments, appropriations, annual repayments, or otherwise of money borrowed by the local authority under that power if that money had been raised and remained secured otherwise than by stock; and in default thereof, or subject thereto,

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they shall provide the same, if the district is a borough, out of the borough fund and borough rate, or out of the district fund and general district rate, or if there is no district fund or general district rate, out of such other rate as the local authority, having regard to the provisions of these regulations and of the Consent Order and to the objects for which the statutory borrowing power was exercised, may consider equitable; and if the district is not a borough, they shall provide the same out of the district fund and general district rate, or, if there is no such fund and rate, out of such other rate as the local authority, having regard as aforesaid, may consider equitable.

(3) The amounts of those several contributions (subject to any payment in reduction thereof authorised by these regulations) shall be determined by the provisions either of paragraph (a), paragraph (b), or paragraph (c) of this clause, according as the Board shall prescribe in the Consent Order, or shall thereafter determine :—

(a) The said amounts shall be the same as would under the statutory borrowing powers have been payable towards paying off the money represented by the stock, or to a sinking fund for the repayment of the same, if the same had been raised otherwise than by the issue of stock; provided that if the moneys payable as aforesaid were not required to be accumulated, the Board may determine what the amounts of the contributions shall be, having regard to the rate at which the redemption fund will be accumulated.

(b) The said amounts shall be such amounts as will, with accumulations at compound interest at a rate per centum per annum to be determined by the Board, be sufficient, after payment of all expenses, to purchase the amount of stock at par within the time within which, under the statutory borrowing power, the money represented by the stock is to be repaid: Provided that the Board may from time to time, if they think fit, alter such rate of interest.

(c) If the statutory borrowing power in exercise of which the stock is issued does not determine the amounts to be paid towards paying off or to a sinking fund in respect of the money to be borrowed thereunder, or the period within which the same is to be repaid, or if the Board approve a scheme for the consolidation of all or any of the loans to be raised by the issue of stock, the amounts of the several contributions shall be such amounts as will, with accumulations at compound interest at a rate per centum per annum to be determined by the Board, be sufficient, after payment of all expenses, to purchase the amount of stock at par within such time, not exceeding sixty years from the first creation of the stock, as the Board shall prescribe in the Consent Order, or shall thereafter determine: Provided that the Board may from time to time, if they think fit, alter such rate of interest.

(4) The provisions of Article 8 of these regulations in regard to the raising of contributions to the dividends fund shall apply to the raising of contributions to the redemption fund as if such provisions were repeated in this article with the substitution of "redemption fund" for "dividends fund."

(5) If it appears to the Board at any time that any contributions to the redemption fund will not be sufficient to redeem the amount of stock in respect of which such contributions are made within the time allowed for the continuance of the loan represented by the stock, the amount of such contributions shall be increased to such extent as the Board may direct; and the Board shall at any time have power to consent to the reduction of the contributions to be made to the redemption fund as aforesaid, either temporarily or permanently, in any case in which it appears to the Board that such contributions would, if maintained, be more than sufficient to redeem the amount of stock in respect of which such contributions are made within the time allowed for the continuance of the loan represented by the stock; and if the amount in the redemption fund at any time is, in the opinion of the Board, sufficient, with the accumulations to arise thereon, to redeem the stock within the time or times allowed for the continuance of the loan or loans represented by the stock, the Board may consent to the discontinuance of contributions to the redemption fund in respect of the stock.

(6) If the local authority create and issue stock for the purpose of defraying

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the expenses of the creation and issue of any stock, the amount of stock created and issued for that purpose shall be redeemable and extinguished after and within the same periods after and within which the stock is to be redeemed and extinguished for the purpose of defraying the expenses of which it was so created and issued; and, for the purpose of determining the amount of the contributions aforesaid, the amount of the said expenses shall be deemed to be the amount of a loan authorised by a statutory borrowing power, and required to be paid off within the period within which the stock is to be extinguished.

(7) If, before the expiration of the period allowed for the continuance of any loan represented by the amount of stock, the local authority apply in the redemption of purchase and extinction of stock to that or any less amount, any part of the redemption fund, then a sum equal to the interest which the part of the redemption fund so applied would have produced at the rate per centum on which the payments to the redemption fund are calculated shall, in each year, until the expiration of the said period allowed for the continuance of the loan, be paid into the redemption fund out of the revenues of the local authority chargeable with payment of the contributions to the redemption fund in respect of the amount of stock aforesaid.

Provided that if any amount of stock extinguished by application of part of the redemption fund as aforesaid is purchased by the local authority at a rate exceeding one hundred pounds sterling for one hundred pounds stock, the interest payable into the redemption fund under this part of this article shall be calculated as if only one hundred pounds sterling had been applied out of the redemption fund for each one hundred pounds stock purchased, and the local authority shall either pay into the redemption fund, during the year in which such purchase is made, an additional sum or sums equal in amount to the sum or sums paid in excess of the said rate for the purchase of stock in such year, or shall, during such year and each succeeding year until the expiration of the period allowed for the continuance of the loan represented by the stock extinguished, pay into the redemption fund such additional sum as the Board shall approve; and such additional sum or sums shall be paid out of the revenues of the local authority chargeable with payment of the contributions to the redemption fund in respect of that amount of stock.

For the purpose of ascertaining what contributions, to be paid out of what revenues, are required to be paid in respect of any amount of stock extinguished as aforesaid, the several amounts of stock issued under different statutory borrowing powers shall be deemed to be extinguished in succession, beginning with the amount created in exercise of the borrowing power under which (at the date of the extinction of such stock) the remaining period allowed either expressly or by implication for the continuance of the loan is the shortest, and proceeding, in order, to that created in exercise of the borrowing power under which the longest remaining period is allowed as aforesaid.

Payment of sale money, etc., to redemption fund.

ART. 15.—(1) Unless the Board otherwise direct, the local authority shall pay into the redemption fund, and shall carry to the proper separate account forming part of the general account of the redemption fund, all such money being capital, or in the nature of capital, and not being wholly or in part otherwise appropriated or required to be otherwise applied, as shall from time to time arise from any sale, lease, or other disposition of land or other property of the local authority on the revenues whereof any stock is charged, and as shall from time to time arise from any other source.

(2) The local authority, before making any payment into the redemption fund under this article, may deduct from the money to which this article applies any costs and expenses properly incurred by the local authority in or about any sale, lease, or other disposition of land or property as aforesaid.

Investment and application of redemption fund.

ART. 16. The local authority shall from time to time apply the redemption fund in redeeming stock according to the terms of issue and purchasing stock for extinction, and, pending such application of the redemption fund or any part thereof, all sums paid into the redemption fund shall be invested on statutory securities, and the interest and annual proceeds arising from those securities shall be paid into the redemption fund, and be invested and accumulated in like manner.

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ART. 17. The local authority on redeeming and purchasing any stock shall forthwith pass a resolution directing the stock so redeemed or purchased to be cancelled by the registrar, and on such cancellation the same and all dividends thereon which have not already become payable shall be and the same are by virtue of these regulations extinguished.

Extinction of stock redeemed or purchased.

ART. 18.—(1) As parts of the general account of the redemption fund, the local authority shall keep—

Account of redemption fund.

(a) An account showing the securities on which all sums paid into the redemption fund are from time to time invested; and

(b) Separate accounts relative to each undertaking or purpose for or in respect of which any statutory borrowing power is exercised by them by the issue of the stock; and

(c) Separate accounts relative to each statutory borrowing power so exercised.

(2) Those separate accounts shall distinguish and show—

(d) The amounts of stock for the time being chargeable to each undertaking or purpose and respectively attributable to the exercise of the several statutory borrowing powers if more than one relating to that undertaking or purpose; and

(e) The several amounts of stock redeemed or purchased by means of the redemption fund and cancelled and extinguished.

(3) Those separate accounts shall further distinguish and show in relation to each undertaking or purpose—

(f) All money being capital, or in the nature of capital, paid into the redemption fund, and in the judgment of the local authority properly attributable to that undertaking or purpose; and

(g) All money from time to time received as interest of the last-mentioned moneys; and

(h) All money and securities transferred to the redemption fund as having formed part of a sinking fund, and all money from time to time received as interest of the last-mentioned money or securities; and

(i) All money paid into the redemption fund as contributions from the revenues of the local authority in respect of redemption and extinction, or purchase and extinction, of those several amounts of stock; and

(j) All money from time to time received as interest of the last-mentioned money.

ART. 19. For the purposes of any contribution or account under these regulations, the local authority, if they think fit, having regard to all the circumstances of the case, and subject to the terms on which any loan of the local authority was contracted, or any stock was issued, may from time to time by resolution, with the approval of the Board, determine and declare on which of the revenues of the local authority any loan of the local authority or any portion of stock is or shall be deemed to be primarily or collaterally charged, or determine and declare that any loan of the local authority or any portion of stock shall be apportioned as regards the charge thereof between or among any of the revenues of the local authority, and every such determination and declaration shall be effectual to all intents.

Determination as to charge of stock.

CONVERSION OF OTHER SECURITIES INTO STOCK.

ART. 20.—(1) Where the consent of the Board is given to the exercise by the local authority of any statutory borrowing power by the creation and issue of stock for the purpose of purchasing, paying off, or redeeming any mortgage, bond, debenture, stock, annuity, rent-charge, or other security granted or created by the local authority under any statutory borrowing power and which the local authority have power, with the consent of the holder of that security, or otherwise, to pay off or to redeem, they may pay off or redeem the security accordingly with money raised by stock, or they may, with the consent of the holder thereof, issue stock in substitution for the security.

Payment off or substitution for existing securities.

Provided that as regards any loans specified for the purposes of this provision in the Consent Order, the Board may, in such Order, require the foregoing powers of this article to be exercised as far as practicable *pari passu* with respect to all such loans and in such manner as not to extend the period

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(2) The local authority may in every such case make such reasonable payment as they may think fit to the holder of any security for his consent, or for otherwise compensating him for the payment off or redemption of or substitution for his security, and any such payment may be either in money or stock, or partly in one and partly in the other.

(3) In every such case of payment off redemption or substitution the local authority shall forthwith pay and transfer into the redemption fund the whole or a proportionate part (as the case may require) of any money and securities forming part of any sinking fund applicable to the discharge of the security, and also such further sum, if any, as may be necessary to make the money and securities so paid and transferred equivalent to the amount which should have been in such sinking fund, or should have been paid off, in respect of the security for the payment off or redemption of which or in substitution for which the stock is created.

(4) Where the holder of the security is one of the persons described in section 7 of the Lands Clauses Consolidation Act, 1845, and by that Act enabled to sell land thereunder, that person may consent to payment or redemption of, or substitution for, the money secured or represented by that security and may accept money for giving that consent as if the person so consenting were the absolute owner of that security, and that person is hereby indemnified for so doing, and his receipt shall be a good discharge for the same.

(5) Money received by the holder of any security as authorised by this article, and stock issued to him in substitution for any security, shall be subject to the same trusts, powers, testamentary, and other dispositions, provisions, and incumbrances, as the money secured or represented by the security was subject to, immediately before the payment off redemption or substitution, and every deed, or other instrument, or any testamentary, or other disposition, shall take effect with reference to the whole, or a proportionate part of the money or stock received, or substituted, as the case may be.

EFFECT ON BORROWING POWERS.

Extinction or suspension of power.

ART. 21. On the issue of any portion of stock the statutory borrowing power, in exercise whereof that stock is issued, shall be affected as follows; namely—

(a) If the stock is issued for the whole term limited for the continuance of any loan, or for the continuance of payment of or in respect of any mortgage, bond, debenture, stock, annuity, rent-charge, rent, or other security granted or created by the local authority under that statutory borrowing power, then that power, to the extent of the money raised by that stock (except in the case hereinafter provided for), shall be and the same is by virtue of these regulations extinguished; but

(b) If the stock is issued for part only of that term, then so much of the money raised by that stock as represents the balance which should be outstanding may be re-borrowed by the local authority for the residue of that term, or any part thereof, and so from time to time.

APPLICATION OF MONEY RAISED.

General application of money from stock.

ART. 22. Money raised by stock shall be applied for purposes for which money raiseable under the statutory borrowing power, in exercise whereof the stock is issued, ought by law to be applied, and not otherwise.

Provided that if, after the raising of any money by stock under these regulations, it shall be found that any part of such money is not required for the purposes to which it is applicable as aforesaid, the local authority shall pay such money into the redemption fund, or apply such money for such other purposes for which the local authority shall have a statutory borrowing power as the Board may, by Order, approve; and if any such money is so paid into the redemption fund the statutory borrowing power in exercise whereof the stock represented by the money so paid was issued shall, to the amount of the money so paid, be deemed not to have been extinguished; and if any such

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money is applied for some other purpose as aforesaid the stock represented by the money so applied shall be deemed to have been created and issued under these regulations in exercise or part exercise of such last-mentioned statutory borrowing power.

Temporary investment of money raised by stock.

ART. 23. The local authority shall from time to time invest temporarily on statutory securities any sum exceeding such sum as may be fixed by the Consent Order, and may so invest any sum raised by stock and not for the time being applied to or required for the undertaking or purpose for which it is raised, and shall from time to time pay the interest of those securities into the dividends fund.

REGISTRATION AND CERTIFICATES.

Appointment of registrar.

ART. 24.—(1) The local authority shall, on and subject to such terms and instructions not inconsistent with any provision of these regulations as they think expedient, appoint and keep appointed an officer of the local authority, or any other person, or the Bank of England, or any other bank, or any banking or other company, as registrar for all or any of the purposes of these regulations (in these regulations referred to as the registrar).

(2) The local authority in relation to these regulations and the registrar shall respectively be deemed a banker within the Bankers Books Evidence Act, 1879.

Stock register.

ART. 25.—(1) The registrar shall keep books, in which shall be entered the names and addresses of holders from time to time of stock, and the amounts held by them (in these regulations referred to as the stock register).

(2) The stock register shall be *primâ facie* evidence of any matter entered therein in accordance with these regulations, and of the title of the persons entered therein as holders of stock.

Certificates of proprietorship of stock.

ART. 26.—(1) On demand of a holder of stock the local authority may, if they think fit, give to him a certificate of the proprietorship thereof, under their common seal, specifying the amount of stock to which he is entitled (in these regulations referred to as a stock certificate).

(2) A stock certificate shall be *primâ facie* evidence of the title of the person therein named, his executors, administrators, successors, or assigns, to the stock therein specified; but the want of a stock certificate, if such want be accounted for to the satisfaction of the local authority, shall not prevent the holder of stock from disposing of and transferring the same.

(3) If a stock certificate is worn out or damaged the local authority, on production thereof, may cancel it and give a similar stock certificate to the party in whom the property in the stock certificate and in the stock therein specified is then vested.

(4) If a stock certificate is lost or destroyed the local authority, on proof thereof to their satisfaction, may give a similar stock certificate to the party entitled to the certificate lost or destroyed.

(5) An entry of the issue of a stock certificate or a substituted certificate, as the case may be, shall be made in the stock register.

TRANSFER.

Power for stockholder to transfer.

ART. 27. Subject to the provisions of these regulations, every stockholder may transfer all or any part of his stock in books or by deed.

Transfer in books.

ART. 28.—(1) If and where the resolution for creation of any portion of stock makes the same transferable in books and not by deed, the provisions of this article shall apply and have effect, but not otherwise.

(2) The registrar shall keep books wherein transfer of stock so transferable shall be entered (in these regulations referred to as the stock transfer books).

(3) Every such entry shall be conceived in proper words for the purpose of transfer, and shall be signed by the party making the transfer, or, if he is absent, by his agent thereunto lawfully authorised in writing under his hand attested by a witness.

(4) Where the Bank of England are the registrar they may, if they think fit, require that the agent be so authorised by power of attorney under the hand and seal of the party making the transfer, attested by two or more credible witnesses.

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(5) The person to whom a transfer is made may, if he thinks fit, underwrite his acceptance thereof.

(6) Except as otherwise provided by Act of Parliament, and subject to the provisions of these regulations respecting any portion of stock which the resolution for creation thereof makes transferable by deed and not in books, no mode of transferring stock other than that prescribed in this article shall be good in law.

Transfer by deed.

ART. 29.—(1) If and where the resolution for creation of any portion of stock makes the same transferable by deed and not in books, the provisions of this article shall apply and have effect, but not otherwise.

(2) Every transfer of stock so transferable shall be by deed.

(3) The deed of transfer shall relate only to the transfer, and shall not contain any recital, trust, or proviso whatsoever.

(4) The deed of transfer, when duly executed, shall be delivered to and kept by the registrar, and the registrar shall enter a memorial thereof in a book to be called the register of transfers of stock, and shall endorse on the deed of transfer a notice of that entry.

(5) The registrar shall on demand, and on delivery up of the old stock certificate, or on such proof that it cannot be produced as the registrar, with the approval of the local authority, may require, deliver a new stock certificate to the purchaser, or shall, at the option of the purchaser, make an endorsement of the transfer on the existing stock certificate, which endorsement, being signed by the registrar, shall be equivalent to a new stock certificate.

(6) Until the deed of transfer has been so delivered to the registrar, the local authority or the registrar shall not be affected thereby, and the purchaser of the stock shall not be entitled to receive any dividend thereon.

Evidence on transfer.

ART. 30.—(1) The registrar, before allowing any transfer of stock, may, if the circumstances of the case appear to him to make it expedient, require evidence of the title of any person claiming a right to make the transfer.

(2) That evidence shall be a statutory declaration of one or more competent persons, or of such other nature as the registrar, with the approval of the local authority, may require.

Closing of transfer books.

ART. 31.—(1) The registrar, with the approval of the local authority, may, as regards any portion of stock, close the stock transfer books or the register of transfers of stock (as the case may be) on any day in the month next before that in which dividends on that portion of stock are payable, but so that the books be not at any time kept closed for more than fifteen days.

(2) The persons who on the day of such closing are inscribed as stockholders shall, as between them and their transferees of stock, be entitled to the dividend next payable thereon.

Stamp duty on transfers.

ART. 32. Unless the local authority have compounded for stamp duty, all stock shall, notwithstanding anything in any resolution of the local authority, be transferable by deed, and not in books, and every deed of transfer of stock transferable by deed shall be duly stamped, and the consideration shall be truly stated therein.

TRANSMISSION.

Transmission on death.

ART. 33.—(1) The interest of a deceased stockholder in stock shall be transferable by his executors or administrators, notwithstanding any specific bequest thereof.

(2) Where two or more persons are registered as owners of any stock, such persons shall be deemed to be joint owners with right of survivorship between them.

(3) The local authority or the registrar shall not be required to allow any executors or administrators to transfer any stock until the probate of the will or the letters of administration to the estate of the deceased has or have been left with the registrar for registration, and may require all the executors who have proved the will to join in the transfer.

Transmission otherwise than by death of holder or transfer in books or by deed.

ART. 34.—(1) If the interest in any stock has become transmitted by any lawful means other than a transfer in books or by deed, or than the death of a stockholder, satisfactory evidence of the transmission shall be furnished to the registrar by a statutory declaration of one or more competent persons, or

in such other manner as the registrar may, with the approval of the local authority, require. Appendix II.

(2) The name of the person entitled under the transmission shall be entered in the stock register.

(3) Until such evidence has been furnished, the local authority or the registrar shall not be affected by the transmission, and no person claiming by virtue thereof shall be entitled to receive any dividend on the stock.

(4) In this article the term transmission includes any case of apparent transmission in consequence of the change of name of the stockholder, although the actual ownership of the stock may remain unaltered.

DIVIDENDS.

ART. 35. The local authority shall pay by the registrar the dividends on stock. Payment of dividends.

ART. 36. The local authority or the registrar shall not be required to pay any executors or administrators any dividend on stock held by their testator or intestate until the probate of the will or the letters of administration has or have been left with the registrar for registration. Dividends to executors, etc.

ART. 37. The registrar before paying any dividend on any stock may, if the circumstances of the case appear to him to make it expedient, require evidence of the title of any person claiming a right to receive the dividend, and that evidence shall be a statutory declaration of competent persons, or of such other nature as the registrar, with the approval of the local authority, may require. Evidence of title.

ART. 38.—(1) Where more persons than one are registered as joint holders of any stock, any one of them may give an effectual receipt for any dividend thereon, unless notice to the contrary has been given to the registrar by any other of them. Dividends to joint holders.

(2) Where stock is standing in the name of an infant or person of unsound mind jointly with any person not under legal disability, a letter of attorney for receipt of the dividends on the stock shall be sufficient authority in that behalf if given under the hand and seal of the person not under disability attested by two or more credible witnesses, but the registrar before acting on the letter of attorney may, if he think fit, require proof to his satisfaction of the alleged infancy or unsoundness of mind by a statutory declaration of one or more competent persons.

ART. 39.—(1) Where a stockholder desires to have his dividends sent to him by post, he may make a request for that purpose to the registrar in writing, signed by him in a form approved by the local authority, and shall give to the registrar an address in the United Kingdom, or in the Channel Islands, or the Isle of Man, to which the letters containing the warrants are from time to time to be sent. Dividend warrants by post.

(2) The posting by the registrar of a letter containing a dividend warrant addressed to a stockholder at his request at the address so given by him shall, as respects the liability of the local authority and of the registrar, be equivalent to the delivery of the warrant to the stockholder himself.

(3) Every warrant so sent by post shall be deemed a cheque, and the local authority and the registrar shall, in relation thereto, be deemed a banker within the Bills of Exchange Act, 1882.

(4) Provided that this article shall not apply to cases to which the provisions of section 4 of the National Debt Act, 1889, apply.

STOCK CERTIFICATES WITH COUPONS TO BEARER.

ART. 40.—(1) On demand of a stockholder, the registrar may issue to the stockholder a stock certificate to bearer, that is to say, a certificate of title to his stock or any part thereof, entitling the bearer to the stock therein specified, and transferable by delivery with coupons entitling the bearer of the coupons to the dividends on the stock, but so that no such certificate or coupons shall give a title to dividends beyond the time limited for redemption of the stock. Provisions respecting stock certificates with coupons to bearer.

(2) A stock certificate to bearer shall not be issued in respect of any sum of stock other than ten pounds or a multiple of ten pounds.

Appendix II.

(3) No trustee shall apply for, purchase, take, or hold a stock certificate to bearer unless he is in express words authorised to do so by the instrument creating his trust, and any contravention of this provision by a trustee shall be deemed a breach of trust; but this provision shall not impose on the local authority or the registrar an obligation to inquire or to take notice whether a person applying for or holding a stock certificate to bearer is or is not a trustee, or subject the local authority or the registrar to any liability in case of his, with or without notice, issuing to a trustee a stock certificate to bearer, or invalidate any stock certificate to bearer issued.

(4) Where a stock certificate to bearer is outstanding the stock represented thereby shall cease to be transferable in books or by deed.

(5) The bearer of a stock certificate to bearer may, on delivery up to the registrar of the certificate, and of all unpaid coupons belonging thereto, require to be entered in the stock register as the holder of the stock described in the certificate under which he derives title, and thereupon such stock certificate and coupons shall be cancelled and the stock shall be re-entered in the register as transferable, and shall become and again be transferable in the stock transfer books or by deed, as the case may require, and shall, as regards the mode of payment of the dividends thereon, be in the like condition as if no stock certificate to bearer had been issued in respect thereof.

(6) The coupons issued with a stock certificate to bearer shall comprise the dividends to be paid in respect of the stock therein specified for such period as the local authority approve.

(7) At the end of that period fresh coupons may be issued for such further period as the local authority approve, and so for successive periods during the continuance in force of the stock certificate, but the local authority may direct the registrar, in lieu of issuing fresh coupons in respect of any stock certificate, to give in exchange a fresh stock certificate with coupons.

(8) Payment to the bearer of a coupon of the amount expressed therein shall be a full discharge to the local authority and to the registrar from all liability in respect of that coupon and the dividend represented thereby.

(9) Where the Bank of England are the registrar coupons shall be payable at the chief establishment of the bank at the expiration of three clear days from the day of presentation, and at any branch establishment of the bank situate more than ten miles from the chief establishment at the expiration of five clear days from the day of presentation.

(10) If a stock certificate to bearer or coupon is worn out or damaged the registrar, on production and delivery up thereof, may cancel it and issue a new certificate or coupon.

(11) If a stock certificate to bearer or coupon is lost or destroyed, the registrar may issue a new certificate or coupon on receiving indemnity to the satisfaction of the local authority against the claims of all persons deriving title under the certificate or coupon lost or destroyed.

(12) All coupons issued under these regulations in respect of any stock certificate to bearer shall, for the purposes of the Acts relating to stamp duties, be deemed to have been attached to and issued with such stock certificate.

(13) Stock specified in a stock certificate to bearer shall be charged on the same securities, and be subject to the same powers of redemption and other powers, and save as regards the mode of transfer and of payment of dividends thereon, and save so far as a stock certificate to bearer is a negotiable instrument, shall be subject to the same incidents in all respects as if that stock had continued to be registered in the stock register as transferable in books or by deed.

GENERAL.

Nature of stock: notice of trusts.

ART. 41.—(1) Stock is personal property.

(2) Stock is not liable to foreign attachment by the custom of London or otherwise.

(3) No notice of any trust, express, implied, or constructive, in respect of any stock, or of any stock, certificate to bearer or coupon, shall be entered in the stock register, or in any other book kept by the local authority or the registrar, or be receivable by the local authority or the registrar, or affect the registrar or the local authority through the registrar or otherwise.

ART. 42.—(1) If at any time any dividend due on any stock remain unpaid for two months after demand in writing the person entitled thereto may apply to the High Court for a receiver, and the Court may, if it thinks fit, appoint a receiver on such terms as it thinks fit. Receiver.

(2) The receiver shall have the like power of collecting, receiving, recovering, and applying all money which ought to be paid under these regulations into the redemption fund or the dividends fund, and of assessing, making, and recovering all rates for the purpose of obtaining the same, as the local authority or any officer thereof would or might have, and such other powers and such duties as the Court thinks fit, and shall apply all money so collected, after payment of expenses and costs as the Court directs, for purposes of these regulations.

(3) The Court may at any time discharge the receiver, and shall have full jurisdiction over him and all persons interested in his acts.

ART. 43. A person taking or holding stock shall not be concerned to inquire or to take notice whether the creation or issue thereof was or was not within any statutory borrowing power of the local authority, or otherwise in accordance with these regulations, or whether or not the local authority or any meeting thereof was properly constituted or convened, or whether or not the proceedings at any meeting of the local authority were legal or regular, or to see to the application of any money raised by stock, or be answerable for any loss or misapplication thereof. Protection of holders of stock.

ART. 44.—(1) Once in every year, at a time appointed by the Board, the clerk to the local authority shall send to the Board an abstract of the accounts of the local authority relating to stock and the redemption fund in a form prescribed by the Board; and such abstract shall be verified by a statutory declaration of an officer of the local authority, if and as may be required by the Board, and such abstract shall be made up to such date in each year as the Board may determine. Annual return to Local Government Board.

(2) Unless and until the Board in any case by Order otherwise direct, the said abstract shall—

(a) Be made up to the twenty-fifth (*d*) day of March in each year;

(b) Be forwarded to the said Board within forty-two days after that day;

(c) Be in the form set forth in the Schedule B. to these regulations; and

(d) Be verified by a statutory declaration of the clerk to the local authority, or of such other officer of the local authority as the Board may, on the application of the authority, approve.

(3) In case of wilful default therein by the clerk to or other officer of the local authority, the said clerk or other officer shall on each occasion be liable to a fine not exceeding twenty pounds, and every fine under this article shall be recoverable summarily on the prosecution of the Board, and not otherwise.

(4) If by any such abstract or otherwise it appears to the Board that the local authority have failed to comply with any requisition of these regulations, or of any Order of the Board thereunder, in relation to any payment, application, or investment, or otherwise in relation to stock or the redemption fund, the Board may by Order require the local authority to make good the default within a time therein limited; and if the default be in respect of any sum payable into the redemption fund, or the misapplication of any part of such fund, the Board may by Order direct that the sum in such Order mentioned, not exceeding double the amount in respect of which default has been made, shall be paid into the redemption fund and be invested and applied as part of that fund.

ART. 45.—(1) If at any time any dividend on any stock is unclaimed at the time for payment thereof the same shall, nevertheless, on demand at any subsequent time whatsoever, be paid to the person showing his right thereto, but without interest in the meantime. Unclaimed dividends.

(2) Where any dividend remains unclaimed for five years from the time for payment thereof the local authority shall cause notice thereof to be sent by post in a registered letter addressed to the stockholder named in their books by the description and at the address therein appearing, and so at the expiration of three other successive periods of five years.

(*d*) Now the thirty-first; see the Order of the L. G. B., 5th April, 1902, *post*, p. 2567.

Appendix II.

(3) At the end of every successive period of five years from the day when the first dividend becomes payable on stock first issued, the local authority shall publish an advertisement in a newspaper circulating in their district, stating what, if any, dividends on stock have then been unclaimed for more than four years, and the names and addresses appearing in the stock register of the persons entitled to such dividends when the same became due.

(4) At the end of every successive period of ten years from the day when the first dividend becomes payable on stock first issued the local authority, unless it has been otherwise agreed between them and the registrar, may require the registrar to repay to them all dividends unclaimed during that period and then in his hands, and the local authority shall cause the same or any other dividends unclaimed during that period to be paid into the dividends fund, and may deal therewith as they are by these regulations empowered to deal with money paid into the dividends fund, without prejudice, nevertheless to the rights of any person to those dividends.

Unclaimed stock.

ART. 46.—(1) If at the end of the period within which any stock is required to be extinguished the local authority, by reason of the holder of any such stock not being forthcoming, or by reason of any doubt as to the ownership of any such stock, shall not be able to redeem, extinguish, and cancel such stock as required by the regulations hereinbefore contained, the local authority shall invest on statutory securities a sum equal to the nominal value of all such stock as cannot be redeemed by reason as aforesaid, such sum to be dealt with as hereinafter prescribed, and thereupon such stock shall be deemed to have been extinguished.

(2) If before the end of the period within which any stock is required to be extinguished the local authority shall have extinguished all the stock, except such as cannot be redeemed by reason as aforesaid, the local authority may invest on statutory securities a sum equal to the nominal value of all such stock as cannot be redeemed as aforesaid, such sum to be dealt with as hereinafter prescribed, and thereupon such stock shall be deemed to have been extinguished.

(3) Any sums invested by the local authority as aforesaid shall, unless sold for the purpose of satisfying any claim in respect of the stock represented by the same, be kept invested on statutory securities for a period of ten years, after which time the local authority may appropriate the said sums and any accumulations thereon for such purposes as the Board may approve, without prejudice, nevertheless, to the rights of any person to the said sums or any part thereof.

Saving for power to borrow otherwise.

ART. 47. Nothing in these regulations shall affect any power of the local authority to raise otherwise than by stock any money which they do not think fit to raise by stock, but whenever, from time to time after the date of the first creation of stock, the local authority raise money othe wise than by stock, they shall cause to be given to each lender of money so raised notice in writing, signed by the clerk or other authorised officer of the local authority, of the equality of charge which stock has or may have by virtue of these regulations.

Saving for power of revocation.

ART. 48. The local authority may by resolution revoke at any time, in whole or in part, any resolution for creation of stock theretofore passed by the local authority if and as far as the same has not been acted on by the issue of stock thereunder, and notice of such revocation shall forthwith be given to the Board; and in so far as the local authority revoke any such resolution, the Board may, if they think fit, by Order, revoke their consent to the exercise of the statutory borrowing power by the creation and issue of stock.

Saving for other obligations.

ART. 49. Except as in these regulations expressly provided, nothing in these regulations shall relieve the local authority from any obligation imposed on them in relation to any statutory borrowing power by any Act of Parliament under or by which that power for the time being exists or is regulated.

Saving for power to sell lands, etc.

ART. 50.—(1) Nothing in these regulations shall affect any power or duty of the local authority to sell, lease, or otherwise dispose of any land or property of the local authority, or to apply any purchase money or other money arising thereby in discharge of any charge on that land or property, or the

revenues thereof, other than the charge of stock, or affect any claim of any person under such first-mentioned charge. Appendix II.

(2) That land or property shall, in the hands of the purchaser or other person taking the same under the sale, lease, or other disposition, be by virtue of these regulations absolutely freed from the charge of stock, and he shall not be concerned to see to the application of that purchase money or other money, or be answerable for any loss or misapplication thereof.

Saving for existing securities.

ART. 51. Nothing in or done under these regulations shall affect any security or charge created or granted or payable by the local authority before and subsisting at the date of the first creation of any stock, and the local authority shall, whenever required by the holder of any security or charge aforesaid, apply all such money, do all such acts, exercise all such powers, collect all such money, and make and levy all such rates as they would or ought to have applied, done, exercised, collected, made, and levied for his benefit and security if these regulations had not been prescribed and made applicable to the local authority.

Forgery.

ART. 52.—(1) Stock shall be deemed capital stock of a body corporate within the Act of the Session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty (chapter ninety-eight) "to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery."

(2) A stock certificate to bearer and a coupon connected therewith shall be deemed a stock certificate and coupon within the Forgery Act, 1870.

Orders of the Local Government Board.

ART. 53. Any determination or directions of the Board under these regulations may be signified by Order under their seal, and any Order of the Board may contain such provisions as the Board think necessary or proper for giving effect thereto, and shall be enforceable by writ of mandamus to be obtained by the Board out of the High Court, and may from time to time be cancelled or varied by the Board, as the circumstances of the case may require, but the Board shall not make any such Order without first hearing the local authority, if desirous of being heard, which hearing may be in the form of a public inquiry, with or without a published report, or in such other form as the Board, having regard to the circumstances, think just and expedient, and sections 294 and 296 of the Public Health Act, 1875, shall apply to hearings, inquiries, and other proceedings to which this article relates: Provided that the costs of inquiries as to which the Board may make Orders under the said section 294 may include such reasonable sum, not exceeding three guineas a day, as the Board may determine, for the services of any inspector holding an inquiry.

Regulations by Bank of England.

ART. 54. Where the Bank of England are the registrar, they may, with the sanction of the local authority, from time to time issue any forms that may be required for carrying into effect the provisions of these regulations, and may also from time to time make any regulations that are not inconsistent with these regulations relative to the following things, and, when made, may alter, vary, or repeal any such regulations, and make other regulations instead thereof, or in addition thereto, and any such regulations for the time being in force shall be duly observed:

(a) The period for which coupons are to be given:
(b) The mode in which the bank are to act in issuing stock certificates to bearer, or entering in the transfer books the bearers of stock certificates to bearer:
(c) The mode of proving the title of or identifying any person applying for a stock receipt or stock certificate, or stock certificate to bearer:
(d) With respect to anything necessary for carrying into effect the provisions of these regulations which relate to or affect the bank.

Forms.

ART. 55. The forms given in the Schedule A. to these regulations may be used for the purposes therein indicated, and the same, or forms to the like effect, with such variations or additions as circumstances require, shall be effectual for those purposes.

Appendix II.

Fees.

ART. 56.—(1) Fees not exceeding those specified in the said Schedule A. may be taken by or on behalf of the local authority in the cases therein mentioned.

(2) The proceeds of fees shall be paid by the local authority into the dividends fund, and shall be applied in reduction of contributions out of the revenues of the local authority payable into that fund in respect of dividends on such portions of stock as the local authority, having regard to the cases in which the fees are paid, determine.

Expenses.

ART. 57.—(1) The expenses incurred by the local authority in or about the creation and issue of any amount of stock, including any sum paid by them for composition for stamp duty thereon and any other expenses properly chargeable to capital, shall be deemed money raiseable under a statutory borrowing power.

(2) Expenses of book-keeping and management and other current expenses from time to time incurred by the local authority in the execution of these regulations shall be defrayed as the ordinary expenses of the local authority are or may be defrayed, and shall be divided amongst the different funds and undertakings of the local authority in such proportions as the local authority, having regard to all the circumstances, may from time to time determine.

SCHEDULES.

SCHEDULE A.

FORM (A).

RESOLUTIONS ON CREATION OF STOCK.

[ ] of [ ].
[, 189 .]

At a meeting of the [ ] of the [ ] of [ ] holden on [day, the day of , 189] at [ ] o'clock in the noon in [ ].

Present :

[ ].

Resolved first—

That, with the consent of the Local Government Board, and subject to the regulations of that Board prescribed under the Public Health Acts Amendment Act, 1890, the [ ] do hereby in exercise of their powers create stock to be called [ ] Stock, and to be issued to an amount which shall be sufficient for the following purposes, but not exceeding [ ] pounds (£) :—

A. For raising the following sums (amounting in the aggregate to the sum of pounds which has not been raised), that is to say :—

(1) The sum of pounds on account of the money which the [ ] have authority to raise by borrowing under the powers conferred upon them by the [ ] for the purchase money for [ ] and the cost of re-construction of portions thereof ;

(2) The sum of pounds on account of the money which the [ ] have authority to raise by borrowing under the powers conferred upon them by the [ ] for the cost of construction of [ ] ;

(3) The sum of pounds on account of the money which the [ ] have authority to raise by borrowing under the powers conferred upon them by the [ ] for the construction of [waterworks] ;

(4) The sum of pounds on account of the money which the [ ] have authority to raise by borrowing under the powers conferred upon them by the [ ] for the purposes of [sewering and paving within the].

B. For raising instead of re-borrowing the sum of pounds required by the [ ] for the purpose of paying off when due sums amounting to pounds which will fall due before the [, 189], being a portion of their debts now subsisting on the security of outstanding securities granted by the [ ] for raising money for the purposes of the following Acts (that is to say) :—

and which sums the [ ] are under those Acts authorised to re-borrow.

C. For raising the sum pounds for paying off or redeeming statutory securities granted by the [ ] under the following Acts and now outstanding (that is to say) :—

D. For the purpose of issuing stock in substitution for statutory securities granted by the [ ] under the following Acts and now outstanding (that is to say) :—

Resolved secondly—

That such stock shall be issued at the price, and shall bear the dividends, and be transferable in the manner hereinafter specified (that is to say) :—

A. The minimum price of issue to be [£] per cent., the first dividend to be payable on the [1st January, 189];

B. Tenders for stock to be made to [ ]. A deposit of 5 per cent. on the amount of stock tendered for to be paid at [ ] at the time of the delivery of the tender;

C. The dates for the further payments on account of the said tenders when accepted to be as follows: On [Wednesday, the 20th day of October, 189 , so much of the amount tendered and accepted as when added to the deposit will leave £75 (sterling) to be paid for each £100 of stock. On Friday, the 26th day of November, 189 , 25 per cent. On Tuesday, the 11th day of January, 189 , 25 per cent. On Tuesday, the 1st day of March, 189 , 25 per cent.]. In case of default in the payment of any instalment at its proper date the deposit and instalments previously paid will be liable to forfeiture;

D. Dividends at £ per cent. per annum, payable [quarterly];

E. Dividends on the total amount of stock (calculated from the 1st of October, 189), to be payable on the 1st January, 189 .

F. Stock certificates to bearer with coupons attached for the dividends payable 1st January, 189 , and 1st April, 189 , to be issued in exchange for the provisional receipts.

G. In the event of the receipt of tenders for a larger amount of stock than that proposed to be issued at or above the minimum price, the tenders at the lowest price accepted to be subject to proportionate diminution.

H. Stock to be issued in sums of not less than £10.

J. Stock to be transferable in books and not by deed. (*See, however, Article* 32.)

Resolved thirdly—

That such stock shall be redeemable as follows: *state terms.*

Resolved fourthly—

That such stock shall be redeemed or purchased and extinguished within a period of years from the creation of such stock.

Resolved fifthly—

That an agreement be entered into with the Commissioners of Inland Revenue for the payment to them of composition under the provisions of the Customs and Inland Revenue Act, 1887, for the stamp duty on the transfers of stock issued under the foregoing resolutions.

FORM (B).

STOCK RECEIPT.

[ ] STOCK (£ PER CENT.)

	RECEIVED this day of , 189 , of	☞The Proprietors to protect themselves from FRAUD are recommended to ACCEPT, by themselves or their attorneys, all TRANSFERS made to them.
Transfer days:	hereinafter called the said transferee, the sum of	
	being the consideration for	
Monday, Tuesday,	interest or share in the [ ] STOCK (per cent.) transferable	
Wednesday, Thursday,	at the , and all my property and interest in, and right to, the same, and the dividends thereon, by	
Friday,	this day transferred unto the said transferee.	£ *s.* *d.*
Holidays excepted.	Witness hand Witness	

[*Indorsement.*]

NOTICE TO HOLDERS OF [ ] STOCK (£ PER CENT.)

Payment of Dividends.

Dividends are due on [*the* 1*st January*, 1*st April*, 1*st July, and* 1*st October*], unless the [1*st*] of either of these months falls on a Sunday, in which case the dividends will be payable on the following business day.

Dividends will be paid in one of the following modes :—

I. To the stockholders personally, or to their attorneys, at the .

N.B.—Stockholders may arrange for the receipt of their dividends, free of charge, at [ ].

Appendix II.

II. By transmission of dividend warrants by post, at the risk of the stockholder, under the following regulations:

1. Any stockholder residing within the United Kingdom, or in the Channel Islands, or the Isle of Man, who desires to have his dividend warrant sent to his address by post, must fill up a form of application, to be obtained at [ ].
2. In the case of joint accounts, the applications must be signed by all the members of the account, directing the warrant to be sent to one of them at a given address.
3. Post dividend warrants will be crossed *& Co.*, and will only be payable through a banker. They will be drawn to the order of the stockholder, and must be endorsed.

☞ Stockholders, whose warrants are sent by post, should give notice to [ ] if they are *not* received on the day on which they ought to be delivered; but need not acknowledge those that arrive in due course.

Stock Certificates to Bearer.

Stock certificates to bearer, of the denominations of [£10 or any multiple of £10] with coupons for the quarterly dividends attached, may be obtained in exchange for inscribed stock, except in the case of stock held upon any trust.

FORM (C).

[ ] STOCK CERTIFICATE.

[ ] of [ ].

No.

This is to certify that *A. B.* of [ ] is the proprietor of [ ] pounds of [ ] stock subject to the regulations relating thereto.

Given under the common seal of the [ ] of the [ ] of [ ] this [ ] day of [ ] [18].

FORM (D).

TRANSFER IN BOOKS.

[ ] STOCK (£ PER CENT.).

No.

		£	s.	d.
Entered by	this day of in the year of our Lord one thousand eight hundred and do assign and transfer			
Witness to the identity of	interest or share in the [ ] STOCK (£ PER CENT.) transferable at the , and all my property and interest in, and right to, the same, and the dividends thereon, unto			

Executors, administrators, or assigns. Witness hand

________Witness

do freely and voluntarily accept the above stock transferred to

Witness

FORM (E).

APPLICATION FOR ISSUE OF POWER OF ATTORNEY.

, the day of , 189 .

From *A. B.* and *C. D.* [*the registered stockholders*]________

£________[ ] STOCK

(£ per cent.)

To *G. H.* [*the intended Attorney*]

Examined by Dr. fol. Cr. fol. Transfer-book.

Posted by Posted by

FORM (F).

POWER OF ATTORNEY FOR SALE AND TRANSFER AND FOR RECEIPT OF DIVIDENDS.

Corporate Account.

[ ] STOCK.

ACCEPTANCE, SALE OF £ AND DIVIDENDS.

We
our attorneys and attorney
for us and in our name and on our behalf—

First—to ACCEPT all transfers made or to be made to us of any sum of

[ ] STOCK.

Secondly—to SELL and TRANSFER all or any part of the sum of said stock standing in our name in the books of the ;

Thirdly—to RECEIVE and GIVE RECEIPTS for all DIVIDENDS or PAYMENTS due or to become due on any sum of the said stock from time to time standing in our name in the books of the ;

AND ALSO—to do whatever is necessary or proper to be done for the purposes aforesaid, or any of them.

In witness whereof we have hereunto affixed our corporate seal, this day of , in the year of our Lord one thousand eight hundred and .

Sealed with the corporate seal and delivered in the presence of

N.B.—The execution of this letter must be attested by [two witnesses who are] not of the corporate body, and who must be present when the corporate seal is affixed.

[*Indorsement.*]

INSTRUCTIONS FOR EXECUTING THE WITHIN LETTER OF ATTORNEY.

Corporate Account.

The *date* must be inserted in *words* and not in figures.

The execution must be attested by [*two credible witnesses* who are] not of the corporate body, and who must add [their addresses and their qualities, professions, or occupations].

A *witness resident in a town* must give the No. of house as well as the name of the street.

If *clerks* or *servants* are witnesses they must give the names and addresses of their employers.

When a witness is a *female* she must state whether she is a *spinster*, *wife*, or *widow*; and if a *wife* she must give her husband's name, address, and quality, profession, or occupation.

A *wife* is not a *valid witness* to the execution of this letter of attorney when her husband's name appears in the letter as attorney or transferee.

If any *alteration*, *interlineation*, *or erasure* be made in this letter of attorney, it must be particularly stated in the attestation, subscribed to by the witnesses, that such alteration, interlineation, or erasure was made previously to the execution of the letter.

I demand to act by this letter of attorney, this day of , 18 .
Witness

FORM (G).

DEED OF TRANSFER.

[ ] of [ ].

I, *A. B.*, of [ ] in consideration of the sum of [ ] pounds paid to me by *C. D.*, of [ ] (hereinafter called the said transferee) do hereby transfer the sum of [ ] pounds [ ] stock standing [or part of the stock standing] in my name in the books of the [ ] of the [ ] of [ ] to hold unto the said transferee, his executors, administrators, and assigns [*or* successors and assigns], subject to the several conditions on which I hold the same at the time of the execution hereof, and I, the said transferee, do hereby agree to take the said stock subject to the same conditions.

As witness our hands and seals the [ ] day of [ ].

Appendix II.

FORM (H).

DIVIDEND WARRANT.
[ ] STOCK
(£ per cent.).

000000

To the

ONE QUARTER OF A YEAR'S DIVIDEND on the sum of -
[ ] Stock, due , 189 .
Less Property Tax at d. per £ – –

PAY SELF OR BEARER.
Examined

[ ].

Witness

FORM (I).

DIVIDEND WARRANT BY POST.

(1.)

[ ] STOCK
(£ PER CENT.).

REQUEST FOR TRANSMISSION OF DIVIDEND WARRANTS BY POST.

To the

Amount. A sum of £ [ ] STOCK (£ per cent.) is now standing in

"my" or "our." name, as follows :—

Names, addresses, and descriptions as recorded in the books.

"I" or "we." As the person entitled to the dividends upon the above-mentioned amount of stock

"myself" or "our *nominee*." hereby authorise [ ], in the name of to draw upon the [ ] for the amount of the quarterly dividends due and to become due on the said amount of stock,

"my" or "our." or on the amount for the time being standing in name :

"I" or "we." And hereby request the said [ ] to send through the post at risk,

"my" or "our." and until further notice, the warrants so drawn to—

If the account is a sole one, insert here the name and address of the stockholder: If the account is a joint one, insert here the name and address of one of the stockholders, as *nominee*.

Name

Present address

SIGN HERE.

In the case of joint stockholders, or of co-executors, all must sign.

Date 189 .

[*On second half-sheet of same Form.*]

This half-sheet is to be retained by the stockholder. Reference to it will often save unnecessary correspondence.

NOTICE TO HOLDERS OF [ ] STOCK
(£ PER CENT.).

Transmission of Dividend Warrants by Post.

Dividends upon the above-named stock may be transmitted through the post to the

Appendix II.

stockholder in sole accounts, and to *any one of the stockholders* in joint accounts, *at their risk* upon a form of request being duly filled up and forwarded to [ ]. (Forms are obtainable at [ ].)

N.B.—This arrangement does not apply to stockholders whose addresses are beyond the United Kingdom, the Channel Islands, and the Isle of Man.

Persons receiving dividends under letters of attorney cannot have the warrants for such dividends sent to them by post.

A separate form must be used for each separate holding of stock.

When forwarding a form of request, care should be taken to state the number of overdue dividends, if any.

Dividends are payable on [1*st January*, 1*st April*, 1*st July*, *and* 1*st October*].

When the [1*st*] happens on a Sunday, the dividends are not payable until the [2*nd*].

Forms of request may be delivered at any date, either by hand or through the post; but when received between the day on which the balance for a dividend is struck and the day on which the dividend is payable, the warrants for such *next* dividend will be forwarded as soon as possible, but the will not guarantee their being posted on the day before the dividend is payable.

For the dividend payable [1*st January*] the balance is struck on or about the [1*st December*].

For the dividend payable [1*st April*] the balance is struck on or about the [1*st March*].

For the dividend payable [1*st July*] the balance is struck on or about the [1*st June*].

For the dividend payable [1*st October*] the balance is struck on or about the [1*st September*].

Warrants for overdue dividends will be forwarded as promptly as possible, but not necessarily by return of post.

Any change of address of the stockholder in sole accounts, or of the nominee in joint accounts, should be notified at once to the [ ]. When any such notification reaches less than a fortnight before the next dividend is due, there may be a delay of a few days in the delivery of the warrant for such next dividend.

In the absence of any notification to the contrary, it will be taken for granted that dividend warrants have duly reached their destinations. When they are not received on the correct day, notice should be given to the [ ] without delay.

As postal dividend warrants are made payable to order, they must be indorsed; they are crossed in blank, and consequently are only payable on presentation by a banker. (will not undertake to cross postal dividend warrants with the names of particular bankers.)

Instructions to transmit warrants by post remain in force, although the stock may have been added to or a part sold.

Stockholders selling stock by attorney, if they wish to continue to receive their dividends through the post, should instruct their bankers or brokers to obtain letters of attorney *for sale only*.

All communications with reference to postal dividend warrants should be addressed to [ ], and the postage should be prepaid.

(2.)

_______Div. POST DIVIDEND WARRANT.

000000

[ ] STOCK.

(£ per cent.)

To the

ONE QUARTER OF A YEAR'S DIVIDEND on the sum of .

[ ] STOCK, due , 189 . .

Less property tax at *d.* per £ . .

Pay or bearer.

Examined

[ ].

The person to whom this warrant is payable must sign here

Warrants outstanding more than six months after date are required to be sent to , for verification before being presented for payment.

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FORM (K).

STOCK CERTIFICATE WITH COUPONS TO BEARER.

[ ] STOCK CERTIFICATE TO BEARER.
Dividend at £ per cent. per annum.

£50 A00000

This is to certify that the bearer of this certificate is entitled to FIFTY POUNDS [ ] stock with dividend thereon at the rate of £ per cent. per annum transferable at [ ].

Dated , 189 .
Signed .

Countersigned .

A00000 £50

The coupons attached to this certificate are payable at [ ].
When the coupons are exhausted this certificate will be exchanged on presentation at [ ] for a new certificate with fresh coupons attached.

[*Coupons.*]

5 Div. [ ] STOCK. Coupon for shillings and pence, (less income tax), being three months' dividend at £ per cent. per annum A 00000 Due [1st *January*, 1892] on certificate for FIFTY POUNDS [ ] STOCK. £0 0 0. *Payable at*	5 Div. [ ] STOCK. *Due* [1st *Jan.* 1892.] A 00000 £0 0 0	4 Div. [ ] STOCK. Coupon for shillings and pence, (less income tax), being three months' dividend at £ per cent. per annum. A 00000 Due [1st *October*, 1891] on certificate for FIFTY POUNDS [ ] STOCK. £0 0 0. *Payable at* .	4 Div. [ ] STOCK. *Due* [1st *Oct.* 1891.] A 00000 £0 0 0
3 Div. [ ] STOCK. Coupon for shillings and pence, (less income tax), being three months' dividend at £ per cent. per annum. A 00000 Due [1st *July*, 1891] on certificate for FIFTY POUNDS [ ] STOCK. £0 0 0. *Payable at*	3 Div. [ ] STOCK. *Due* [1st *July*, 1891.] A 00000 £0 0 0	2 Div. [ ] STOCK. Coupon for shillings and pence, (less income tax), being three months' dividend at £ per cent. per annum. A 00000 Due [1st *April*, 1891] on certificate for FIFTY POUNDS [ ] STOCK. £0 0 0. *Payable at* .	2 Div. [ ] STOCK. *Due* [1st *April*, 1891.] A 00000 £0 0 0

FEES.

	£	*s.*	*d.*
On original issue of stock receipt or stock certificate	0	2	6
On any new stock certificate	0	2	6
On transfer including certificate	0	5	0
On any issue of stock certificate to bearer in respect of every *ten* pounds of stock specified therein	0	0	6
On re-entry in stock register of stock specified in stock certificate to bearer .	0	5	0

* * * * *

[*Here followed the form prescribed for the Abstract of Accounts. It is repealed and replaced by the following Order.*]

Appendix II.

ORDER OF THE LOCAL GOVERNMENT BOARD, DATED APRIL 5, 1902, PRESCRIBING THE FORM OF ABSTRACT OF THE STOCK AND REDEMPTION FUND ACCOUNTS.

TO THE SEVERAL LOCAL AUTHORITIES who have created or who may hereafter create Stock under the Stock Regulations, 1891, 1897, and 1901; To the Clerks to the said Local Authorities; And to all others whom it may concern.

WHEREAS by Article 44 of the Stock Regulations, 1891, duly made and confirmed in pursuance of the provisions of section 52 of the Public Health Acts Amendment Act, 1890, we, the Local Government Board, ordered and prescribed as follows (*e*) :—

* * * * *

And whereas . . . (*f*).

* * * * *

And whereas the Stock Regulations, 1891, were amended by the Stock Regulations (Amendment), 1897, and the Stock Regulations (Amendment), 1901, also duly made and confirmed in pursuance of the provisions of section 52 of the Public Health Acts Amendment Act, 1890, and it is expedient that another form should be prescribed for the said abstract of accounts and that the St. Helens and Stockport Orders should be rescinded;

Now therefore, in pursuance of the powers given to us in that behalf, we hereby direct that, unless and until we in any case by Order otherwise direct, the abstract of the accounts which the clerk to the local authority is, by Article 44 of the Stock Regulations, 1891, required to send to us shall be in the form set forth in the schedule to this Order in lieu of any other form heretofore prescribed by us, and shall be made up to the thirty-first day of March in each year, and shall be forwarded to us within forty-two days after that day.

And we do hereby rescind the St. Helens and Stockport Orders.

(*e*) The article here recited appears on p. 2557, *ante*.

(*f*) This clause recites the St. Helens and Stockport Orders dated 2nd October, 1900, which are now repealed.

Appendix II.

SCHE

Abstract of Stock and Redemption Fund Accounts made

1. Name of local authority
2. Designation of stock in respect of which the abstract is made
3. Date of Consent Order under which the stock was issued

BORROWING POWERS.

Purpose and Account in respect of which Borrowing Power is exercised.	Act of Parliament, Provisional Order, or Sanction authorising borrowing.	Amount of Borrowing Power.	Amount of Borrowing Power authorised to be exercised by the issue of Stock.	Amount of Borrowing Power exercised up to commencement of Year.		Amount of Borrowing Power exercised up to end of Year.		Total Borrowing Power exercised by the issue or transfer of Stock and otherwise up to end of Year.	Period within which Loan is repayable.	Date when first annual payment to Redemption Fund became due.	Rate of Interest prescribed for accumulation of Redemption Fund.
				(a.) By the issue of Stock.	(b.) By the application of part of Redemption Fund and transfer to the Account of the Borrowing Power exercised of Stock previously issued. [Art. 2, Stock Regulations (Amendment), 1901.]	(a.) By the issue of Stock.	(b.) By the application of part of Redemption Fund and transfer to the Account of the Borrowing Power exercised of Stock previously issued. [Art. 2, Stock Regulations (Amendment), 1901.]				
7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.			

REDEMPTION

Amount received and paid to Redemption Fund during Year from Sales of Surplus Land, &c.	Amount having formed part of any Sinking Fund, and paid into Redemption Fund during Year.	Amount carried to Redemption Fund during the Year as Interest on Investments.	Amount carried to Redemption Fund during the Year as Interest on part of the Fund applied in Extinction of Stock, or applied to Borrowing Power in accordance with Art. 2, Stock Regulations (Amendment), 1901.	Amount carried to Redemption Fund during Year and not included in previous Columns, showing separately the ordinary Annual Payment for Redemption of Stock and any other amounts.	Rate, Fund, or Revenue from which Payments in last two preceding Columns were made.	Total carried to Redemption Fund from all sources during Year.	Amount standing to credit of Redemption Fund at commencement of Year.
29.	30.	31.	32.	33.	34.	35.	36
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.

DULE. Appendix II.

in pursuance of Article 44 *of the Stock Regulations*, 1891.

4. Period for which abstract is made, viz., year ended
5. Rate of interest on stock
6. Average price of each issue of stock

STOCK ACCOUNT.

Amount of Stock issued on or transferred to each Account up to commencement of Year.		Issue, Transfers, and Extinction of Stock on each Account during the Year.							
(a.) Stock originally issued on the Account.	(b.) Stock transferred to the Account.	Amount of new Stock issued.	Amount of Stock transferred to the Account.	Amount of Stock transferred from the Account.	Account from or to which transferred.	Amount of Stock extinguished.	Total Amount of Stock transferred from or extinguished on each Account up to commencement of Year.	Total Amount of Stock transferred from or extinguished on each Account up to end of Year.	Amount of Stock remaining (*i.e.* neither transferred nor extinguished) on each Account at end of Year.
19.	20.	21.	22.	23.	24*	25.	26.	27.	28.
£ *s. d.*	£ *s. d.*	£ *s. d.*	£ *s. d.*	£ *s. d.*		£ *s. d.*	£ *s. d.*	£ *s. d.*	£ *s. d.*

* Give reference to the number of the line in this return on which the borrowing power from or to which the stock is transferred appears.

FUND ACCOUNT.

Amount paid for Extinction of Stock during Year.	Amount applied during Year to Borrowing Powers in accordance with Art. 2, Stock Regulations (Amendment), 1901.	Total carried to Redemption Fund for Redemption of Stock up to end of Year.	Total paid for Extinction of Stock up to end of Year.	Total applied up to end of Year to Borrowing Powers in accordance with Art. 2, Stock Regulations (Amendment), 1901.	Amount standing to credit of Redemption Fund at end of Year.		
					Uninvested.	Invested.	Description and Nominal Amount of Securities in which invested, and Interest payable thereon.
37.	38.	39.	40.	41.	42.	43.	44.
£ *s. d.*	£ *s. d.*	£ *s. d.*	£ *s. d.*	£ *s. d.*	£ *s. d.*	£ *s d.*	

(Signature)

Appendix II.

Given under the Seal of Office of the Local Government Board, this fifth day of April, in the year one thousand nine hundred and two.

(L.S.) CHAS. T. RITCHIE,
One of the Ex-officio Members of the Local Government Board.

H. C. MONRO, *Assistant Secretary.*

ORDER IN COUNCIL OF THE 3RD AUGUST, 1897.

At the Court at Osborne House, Isle of Wight, the 3rd day of August, 1897.

PRESENT,

The Queen's Most Excellent Majesty in Council.

WHEREAS the Local Government Board did, in pursuance of the powers conferred upon them by the Public Health Acts Amendment Act, 1890, on the third day of June, 1897, make certain regulations amending the regulations confirmed by Order in Council of 26th September, 1891, applicable to the creation, issue, transfer, and redemption of and other dealings with any stock which any urban sanitary authority create in exercise of any statutory borrowing power :

And whereas the said amending regulations have, as required by the said Act, been laid before both Houses of Parliament for a period of thirty days, and no resolution has been passed by either House that such amending regulations ought not to be proceeded with.

Now, therefore, Her Majesty, having taken the said amending regulations (copy whereof is hereunto annexed) into consideration, is pleased, by and with the advice of Her Privy Council, to confirm and doth hereby confirm the same.

C. L. PEEL.

AMENDING REGULATIONS REFERRED TO IN THE FOREGOING ORDER.

PUBLIC HEALTH ACTS AMENDMENT ACT, 1890 (53 & 54 VICT. C. 59, S. 52).

REGULATIONS AS TO ISSUE OF STOCK. AMENDING ORDER.

WHEREAS by section 52 of the Public Health Acts Amendment Act, 1890 (which section forms Part V. of the said Act) [*the section* (ante, *p.* 867) *is recited*].

And whereas the Local Government Board by Order dated the 3rd day of July, 1891, made regulations under the said section (hereinafter called "the regulations"), and the same were confirmed by Order in Council dated the 26th day of September, 1891 ;

And whereas it is desirable that the regulations should be amended as hereinafter provided :

Now, therefore, we, the Local Government Board, in pursuance of the powers given to us by the above-cited section, do hereby order and prescribe as follows :—

From and after the confirmation of these regulations by Order in Council the regulations shall be amended by the additions and alterations hereinafter contained, and as so amended shall apply to the creation, issue, transfer, and redemption of, and other dealings with, any stock which any council of a county borough or district council or other authority having adopted Part V. of the said Public Health Acts Amendment Act, 1890, or otherwise entitled to issue stock thereunder, create with our consent under the regulations in exercise of any statutory borrowing power as defined in Article 1 thereof :

Provided that the said additions and alterations shall not apply to any stock issued before the confirmation of these regulations, except as hereinafter expressly mentioned, or as we may hereafter direct.

ART. 1.—(1) An authority who shall have issued stock under the regulations, whether of one or more classes, and whether before or after the date of this Order, may, if the Board by a Consent Order so provide, from time to time create and issue stock, under and subject to the regulations as hereby amended, of another class, than any stock previously created by the authority, and so that some or all of the terms and conditions on which the same is issued, including the rate of dividend payable thereon and the period after which the same shall become redeemable, may not be the same as those of any stock previously created, but any stock shall rank equally with the stock previously issued, and (unless otherwise expressed in the resolution for the creation of the stock) with all other securities of the authority created or granted in pursuance of any statutory borrowing power at any time after the date of the first creation of any stock.

(2) There shall be a separate stock (dividends) fund and a separate stock (redemption) fund for every class of stock; the funds for each class of stock being distinguished by number or otherwise.

(3) So long as any money is payable under Article 15 of the regulations into the stock (redemption) fund for one class of stock, no moneys shall be payable under that article into the stock (redemption) fund for any other class of stock except that any money to which that article applies and which shall have arisen from any sale, lease, or other disposition of land or other property purchased or otherwise acquired by means of money raised by stock, or by means of any loan which shall have been converted into stock, shall be paid into the stock (redemption) fund for the stock by which the money was raised or into which the loan has been converted.

(4) In this Order the term "dividends fund" and "redemption fund" shall mean as well the stock (dividends) fund, and stock (redemption) fund under the regulations, as the stock (dividends) fund and the stock (redemption) fund for any class of stock created and issued by an authority under the provisions of this article.

ART. 2. In any consolidation scheme, under Article 5 of the regulations, loans raised or authorised to be raised by stock under a previous Consent Order, may be included, whether such Consent Order has been made before or after this Order.

ART. 3.—(1) If money to be raised by the issue of stock is to be lent by the authority, and to be repaid by instalments, or if in any other case the Board think fit, the Board may by the Consent Order prescribe, or may thereafter determine, that the amounts of the several contributions to the redemption fund in respect of such stock (subject to any reduction thereof authorised under the regulations) shall be determined by the provisions either of paragraph (a), paragraph (b), or paragraph (c) of this clause:—

(a) The said amounts shall be the same as would under the statutory borrowing power have been payable towards paying off the money represented by the stock, or to a non-accumulating sinking fund for the repayment of the same, if the same had been raised otherwise than by the issue of stock.

(b) The said amounts shall be such equal annual amounts as will be sufficient after payment of all expenses, to purchase the amount of stock at par within the time within which, under the statutory borrowing power or the Consent Order, the money represented by the stock is to be repaid.

(c) If the statutory borrowing power in exercise of which the stock is issued does not determine the amounts to be paid towards paying off or to a non-accumulating sinking fund in respect of the money to be borrowed thereunder, or the period within which the same is to be repaid, or if the Board approve a scheme for the consolidation of all or any of the loans raised or to be raised by the issue of stock, the amounts of the several contributions shall be such equal annual amounts as will be sufficient, after payment of all expenses, to purchase the amount of stock at par within such time, not exceeding sixty years from the first creation of the stock, as the Board shall prescribe in the Consent Order, or shall thereafter determine.

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(2) Except as hereinafter provided, the provisions of clause (3) of Article 14 of the regulations, and so much of clause (7) of that article as requires interest to be paid into the redemption fund or any part of that fund applied in the redemption or purchase and extinction of such stock, and so much of Article 16 of the regulations as requires the interest and annual proceeds arising from the investment of the redemption fund to be invested and accumulated shall not apply to such part of the redemption fund as represents contributions made thereto under this article; provided that (without prejudice to the power reserved to the Board under clause (5) of Article 14 of the regulations), if the Board shall at any time be of opinion that such part of the redemption fund as represents contributions made under this article will not in consequence of the depreciation of the securities in which the fund is invested, be sufficient to redeem or purchase the amount of stock in respect of which such contributions are made as required by the regulations as hereby amended, they may direct that the above-mentioned provisions of clause (7) of Article 14 and of Article 16 shall apply with such modifications as they may prescribe. Provided also, that so long as the above-mentioned provisions of Article 16 shall not apply, the interest and annual proceeds arising from the investment of such part of the redemption fund as represents contributions made under this article may be paid into the dividends fund, in reduction of the amount to be provided by contributions as required by Article 7 of the regulations.

ART. 4.—(1) If the local authority create and issue stock for the purpose of raising any money to be paid under clause (2) of Article 20 of the regulations, to the holder of any security for his consent to or for otherwise compensating him for the payment off or redemption of his security, or to the substitution of stock for his security, the period within which provision shall be made for the redemption of the amount of stock created and issued for that purpose shall be such period, not exceeding the period within which the money representing the security paid off or redeemed or for which the stock is substituted is required to be paid off under the statutory borrowing power or the Consent Order, as the Board may by the Consent Order prescribe, or may thereafter determine.

(2) The amount of any payment under clause (2) of Article 20 of the regulations which may be raised by the issue of stock shall not exceed the amount which the Board may by the Consent Order authorise to be so raised.

ART. 5. The following provisions shall be substituted for the last paragraph of Article 14 of the regulations, and shall apply to stock issued before or after this Order:—

"When the local authority redeem or purchase and extinguish stock by the application of any part of the redemption fund, the stock so redeemed or purchased and extinguished shall be deemed to be stock issued in respect of such one or more of the statutory borrowing powers exercised by the issue of stock and, if in respect of more than one, in such proportions as the local authority shall before or within three months after the redemption or purchase direct, or, in default of such direction, as the Local Government Board shall determine: Provided that no larger amount of stock shall be deemed to be redeemed or purchased and extinguished in respect of any statutory borrowing power than the amount which, according to the actual price of redemption or purchase, could be redeemed or purchased with the contributions paid into the redemption fund in respect of that borrowing power and the accumulations (if any) thereon."

ART. 6. The words "the statutory borrowing power which the authority could exercise for such other purpose" shall be substituted in Article 22 of the regulations for the words "such last-mentioned statutory borrowing power." This amendment shall apply to stock issued before or after this Order.

ART. 7. The following provisions shall be substituted for Article 23 of the regulations, and shall apply to money raised by stock issued before or after this Order:—

"The local authority may, and if required by the Local Government Board shall, from time to time invest temporarily on statutory securities any sum raised by stock and not for the time being required for the purpose for which it was raised."

ART. 8. The following shall be substituted for clause (5) of Article 29 of the regulations:—

"The registrar shall, after reasonable notice, and on delivery up of the old stock certificate, or on such proof that it cannot be produced, as the registrar, with the approval of the local authority, may require, deliver to the purchaser a new stock certificate under the seal of the local authority."

ART. 9. Clause (1) of Article 57 of the regulations shall be amended by the substitution for the words "including any sum paid by them for composition for stamp duty thereon and any other expenses" of the words "so far as they are."

ART. 10. These regulations shall be read as one with the regulations, and may be cited as "The Stock Regulations (Amendment), 1897," and with the regulations as "The Stock Regulations, 1891 and 1897," and the regulations may be cited as "The Stock Regulations, 1891."

Given under the Seal of Office of the Local Government Board, this third day of June, in the year one thousand eight hundred and ninety-seven.

(L.S.) HENRY CHAPLIN, *President*.

HUGH OWEN, *Secretary*.

ORDER IN COUNCIL OF THE 8TH AUGUST, 1901.

At the Court at St. James's, the 8th day of August, 1901.

PRESENT,

The King's Most Excellent Majesty in Council.

WHEREAS the Local Government Board did, in pursuance of the powers conferred upon them by the Public Health Acts Amendment Act, 1890, on the second day of July, 1901, make certain regulations amending the regulations, confirmed by Orders in Council of 26th September, 1891, and 3rd August, 1897, applicable to the creation, issue, transfer, and redemption of and other dealings with any stock which any urban sanitary authority create in exercise of any statutory borrowing power.

And whereas the said amending regulations have, as required by the said Act, been laid before both Houses of Parliament for a period of thirty days, and no resolution has been passed by either House that such amending regulations ought not to be proceeded with.

Now, therefore, His Majesty, having taken the said amending regulations (copy whereof is hereunto annexed) into consideration, is pleased, by and with the advice of His Privy Council, to confirm and doth hereby confirm the same.

A. W. FITZROY.

AMENDING REGULATIONS REFERRED TO IN THE FOREGOING ORDER. PUBLIC HEALTH ACTS AMENDMENT ACT, 1890 (53 & 54 VICT. c. 59, s. 52).

REGULATIONS AS TO ISSUE OF STOCK. AMENDING ORDER.

WHEREAS by section 52 of the Public Health Acts Amendment Act, 1890 (which section forms Part V. of the said Act) [*the section* (ante, *p.* 867) *is recited*].

And whereas it is provided by the Public Health Acts Amendment Act, 1890, that Part V. of that Act may be adopted by any urban sanitary authority, and by virtue of the Local Government Act, 1894, urban sanitary authorities other than the councils of county boroughs are to be called urban district councils;

And whereas we, the Local Government Board, made the Stock Regulations, 1891, and the Stock Regulations (Amendment), 1897, and the same were confirmed by Orders in Council dated respectively the 26th day of September, 1891, and the 3rd day of August, 1897;

Appendix II.

And whereas it is desirable that the Stock Regulations, 1891, and the Stock Regulations (Amendment), 1897, should be amended as hereinafter provided:

Now, therefore, in the exercise of our powers in that behalf, we do hereby order and prescribe as follows:—

ART. 1. Article 2 of the Stock Regulations, 1891, shall have effect as if in paragraph (1) thereof for the words "at such price, being not lower than ninety-five per centum," there were substituted the words "at such price being not lower, except where the Board otherwise consent, than ninety-five per centum."

ART. 2. Article 16 of the Stock Regulations, 1891, shall have effect as if there were added to the said Article the following proviso; that is to say,—

"Provided as follows:—

"(1) Where the local authority have any statutory borrowing power and are authorised to exercise the statutory borrowing power by the creation and issue of stock, the local authority, instead of raising moneys in the exercise of the statutory borrowing power by the creation and issue of additional stock, may, subject to this proviso, exercise the statutory borrowing power, either wholly or partially, by using for the purpose any moneys for the time being forming part of the redemption fund and standing to the credit of any separate account or separate accounts forming part of the general account of that fund.

"(2) Where the local authority determine to proceed in the manner authorised by paragraph (1) of this proviso the local authority shall pass a resolution to that effect; and shall, by the resolution, prescribe all such matters or things as in or in pursuance of this proviso are referred to as prescribed or are required to be prescribed; and, after passing the resolution, the local authority shall—

"(a) withdraw from the redemption fund the prescribed sum which shall be equal to the amount of the statutory borrowing power proposed to be exercised, and such sum shall be deemed to be withdrawn from such separate account or separate accounts in the general account of the redemption fund as shall be prescribed; and

"(b) deduct, from the amount of stock for the time being chargeable to the undertaking or purpose or attributable to the exercise of the borrowing power to which a separate account prescribed as aforesaid has reference, a portion of stock at par value equal to the sum withdrawn from that separate account, and transfer that portion of stock, as from the prescribed date, to the separate account in respect of which the statutory borrowing power is exercised under this proviso.

"(3) These regulations, and any regulations amending these regulations, shall apply—

"(a) to the moneys withdrawn from the redemption fund and used as aforesaid as though the moneys so withdrawn had been applied in the redemption of stock at par on the separate account or separate accounts from which the moneys were withdrawn, and as though the moneys so used had been raised by the issue of additional stock for the purposes of the separate account in respect of which the statutory borrowing power is exercised under this proviso: and

"(b) to the stock deducted and transferred as aforesaid as though the stock so deducted had, in pursuance of the regulations, been redeemed by the application of the redemption fund on the separate account or separate accounts from which the stock was deducted but subject to the condition that such stock shall not

be cancelled, and as though the stock so transferred were additional stock expressly issued for the purposes of the separate account in respect of which the statutory borrowing power is exercised under this proviso."

ART. 3. Article 6 of the Stock Regulations (Amendment), 1897, and the proviso to Article 22 of the Stock Regulations, 1891, shall be rescinded ; and the last-mentioned article shall have effect as if there were added to the said article the following proviso ; that is to say,—

"Provided that if, after the raising of any money by stock under these regulations, it shall be found that any part of such money is not required for the purposes to which it is applicable as aforesaid, the local authority shall pay such money into the redemption fund, and shall carry the same to the proper separate account forming part of the general account of the redemption fund."

ART. 4. For the purposes of this Order, the expression "local authority" includes any authority who, by the adoption of Part V. of the Public Health Acts Amendment Act, 1890, or otherwise, may be entitled to issue stock in the manner provided by and subject to the provisions of the said Part.

ART. 5. The regulations in this Order shall be read as one with the Stock Regulations, 1891 and 1897, and may be cited as "The Stock Regulations (Amendment), 1901," and with the Stock Regulations, 1891 and 1897, may be cited as "The Stock Regulations, 1891, 1897, and 1901."

Given under the Seal of Office of the Local Government Board, this second day of July, in the year one thousand nine hundred and one.

(L.S.) WALTER H. LONG, *President.*

S. B. PROVIS, *Secretary.*

TOWN-PLANNING.

See HOUSING.

TRAMWAYS.

BOARD OF TRADE RULES WITH RESPECT TO PROVISIONAL ORDERS AND OTHER MATTERS UNDER THE TRAMWAYS ACT, 1870 (*g*), WITH COPY OF A PORTION OF THE ACT.

* * * * * *

NOTES.

(1) *All memorials, objections, and other documents should be on paper of foolscap size.*

(2) *Promoters who desire to be incorporated must register themselves under the Companies Act,* 1862.

BY WHOM PROVISIONAL ORDERS MAY BE OBTAINED AND THE NECESSARY CONSENTS THERETO.

By the Tramways Acts, 1870, it is provided as follows :

"PART I.—*Provisional Orders authorising the Construction of Tramways.*

"SECTION 4.—Provisional Orders authorising the construction of tramways in any district may be obtained by—

By whom Provisional Orders may be obtained and the necessary consents thereto.

"(1) The local authority of such district ; or by—

"(2) Any person, persons, corporation, or company, with the consent of the local authority of such district ; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of the Highway Acts.

* * * * * *

(*g*) 33 & 34 Vict. c. 78, *ante*, p. 1504.

"Application for a Provisional Order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the Schedule A. to this Act annexed. (This schedule follows on p. 2577.)

"Where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any Provisional Order can be obtained."

Definition of Terms.

Section 3 provides that for the purposes of the Act—

The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part I. of the Schedule A. to this Act annexed.

The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same.

The term "road authority" shall mean, in the districts specified in the table in Part II. of the Schedule A. to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road.

The term "district" in relation to a local authority or road authority shall mean the area within the jurisdiction of such local authority or road authority.

SCHEDULE A.

PART I.

Definition of local and road authorities.

Local Authority.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The local rate.
	ENGLAND AND WALES.	
The city of London and the liberties thereof	The mayor, aldermen, and commons of the city of London.	The consolidated sewers rate.
The Metropolis (1)	The Metropolitan Board of Works.	The metropolitan consolidated rate.
Boroughs (2)	The mayor, aldermen, and burgesses acting by the council.	The borough fund or other property applicable to the purposes of a borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board . .	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom or otherwise, as or instead of a vestry or select vestry.	The poor rate.

SCHEDULE A.—PART I.—*continued.*

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The local rate.
	SCOTLAND.	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The town council .	The prison assessment or police assessment, as the local authority shall resolve.
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any General or Local Act.	The police commissioners or trustees.	
In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The road trustees having the management of any road on which a tramway is proposed to be constructed.	The tolls, duties, and assessments leviable by the road trustees.

SCHEDULE A.

PART II.

Road Authority.

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the Metropolis (1) mentioned in Schedule (A) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.
Districts within the Metropolis (1) formed by the union of the parishes mentioned in Schedule (B) to the Metropolis Management Act, 1855.	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855.

Notes.

"(1) 'The Metropolis' shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.

"(2) 'Borough' shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled 'An Act to provide for the regulation of municipal corporations in England and Wales.'"

SCHEDULE A.

PART III.

"The approval of any intended application for a Provisional Order by a local authority shall be in manner following; that is to say,— Evidence of approval and consent.

"A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

"Such special meeting shall not be held unless a month's previous notice of the same and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Appendix II.

"Such resolution shall not be passed unless two-thirds of the members constituting such local authority are present and vote at such special meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid, and held not less than three weeks and not more than six weeks thereafter. Where any such resolution relating to the metropolis as the same is defined in Part I. of this Schedule, or to any district in Scotland of which road trustees are the local authority, has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved."

RULES OF THE BOARD OF TRADE.

Approval of application made by local authorities.

RULE I. When the application is made by any local authority, the evidence of approval required as above by Schedule A. (Part III.) of the Act must be given at the time fixed for proving compliance with the Act and these Rules, by (a) a certified copy of the resolution approving of the intention to make the application, (b) a certified copy of the notice convening the special meeting to consider the application, and (c) a certified statement of the number of members constituting the local authority, and of the number present and voting at such special meeting.

Consent to applications not made by local authorities.

RULE II. Where an application is made by promoters, not being the local authority of the district in which the tramway is proposed to be laid, evidence of the consent required by Part I., section 4 of the Act, must be given at the time fixed for proving compliance with the Act and these Rules, by (a) a certified copy of the resolution passed at a meeting of the local or road authority, as the case may be, at which the application was approved, (b) a copy of the notice convening the meeting, which notice must contain a statement that the subject of the proposed tramway will be brought before the meeting.

Similar evidence of the consent of the local and road authorities must be produced in cases in which the promoters seek to use steam or other mechanical power on any tramway or tramways already authorised.

ADVERTISEMENT AND NOTICES IN OCTOBER OR NOVEMBER AND DECEMBER.

Advertisement and notices of intended application and deposits.

Section 6. "The promoters intending to make an application for a Provisional Order shall proceed as follows:—

"(1) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement; and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the Standing Orders (if any) of both Houses of Parliament for the time being in force with respect to Bills for the construction of tramways (see Schedule B., Part I.).

"(2) On or before the thirtieth day of the same month of November they shall deposit the documents described in part two of the same (*h*) schedule, according to the regulations therein contained:

"(3) On or before the twenty-third day of December in the same year they shall deposit the documents described in part three of the same (*i*) schedule, according to the regulations therein contained."

* * * * * *

SCHEDULE B.

PART I.

Contents of advertisement of intended application

"(1) Every advertisement is to contain the following particulars:—

"1. The objects of the intended application.

"2. A general description of the nature of the proposed works, if any.

"3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.

"4. The times and places at which the deposit under Part II. of this schedule will be made.

(*h*) Schedule B. (*i*) Schedule B (on p. 2581).

"5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as hereinafter provided.

"(2) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

"(3) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works, if any, will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

"(4) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district is situate in England or Scotland."

Description of tramways in advertisement.

RULE III. The tramways mentioned in the advertisement of the intended application should be described in the manner prescribed in Rule XVI., but the length need not be inserted.

Advertisement as to narrow places.

RULE IV. The advertisement must specify at what point or points, and on which side of the street or road, it is proposed to lay such tramway, so that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways, a less space than ten feet six inches shall intervene between the outside of the footpath on the side of the street or road and the nearest rail of the tramway. The notice shall also specify the gauge to be adopted, and what power it is intended to employ for moving carriages or trucks upon the tramway.

Street notice.

RULE V. In the months of October and November, or one of them, immediately preceding the application for any Provisional Order, a notice thereof shall be posted for fourteen consecutive days in every street or road, along which it is proposed to lay the tramway in such manner as the authority having the control of such street or road shall direct; and if after application to such authority no such direction shall be given, then in some conspicuous position in such street or road; and such notice shall also state the place or places at which the plans of such tramway will be deposited.

Notice to owners and lessees of railways, tramways and canals.

RULE VI. On or before the 15th day of December immediately preceding the application for any Provisional Order for laying down a tramway crossing any railway or tramway on the level, or crossing any railway, tramway, or canal by means of a bridge, or otherwise affecting or interfering with such railway, tramway, or canal, notice in writing of such application shall be served upon the owner or reputed owner and upon the lessee or reputed lessee of such railway, tramway or canal, and such notice shall state the place or places at which the plans of the tramway to be authorised by such Provisional Order have been or will be deposited.

Similar notice must also be given to county councils and to proprietors of navigable rivers in respect of their bridges or other works which are proposed to be crossed or otherwise interfered with.

Every notice under this Rule must be accompanied by a copy of Rule XVII., omitting the first paragraph, and must state where copies of the draft Provisional Order, when deposited at the Board of Trade, can be obtained.

Notice to local and road authorities.

RULE VII. When the promoters make application for an extension of time for the construction of, or for authority to abandon, any tramway, they must on or before the 15th day of December, serve notice of such application upon all the local and road authorities affected.

Intimation to intending objectors.

RULE VIII. The preceding advertisement and notices, other than the street notice, must state that every company, corporation, or person desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter, addressed to the assistant secretary of the Railway Department of the Board of Trade, *on or before the 15th January* next ensuing; that copies of their objections must at the same time be sent to the promoters; and that in forwarding to the Board of Trade such objections the objectors or their agents should state that a copy of the same has been sent to the promoters or their agents.

Appendix II.

Notice to frontagers.

RULE IX. On or before the 15th day of December immediately preceding the application for a Provisional Order, notice in writing must be given to the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of any street or road where, for a distance of thirty feet or upwards, it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway.

This notice should be given in respect of such premises on both sides of the road, and must contain a notification that if such owner, lessee, or occupier dissents from the tramway being so laid, he may express his dissent by a statement in writing, addressed to the assistant secretary of the Railway Department of the Board of Trade, *on or before the 1st January* next ensuing, and that he must at the same time send a copy of his dissent to the promoters.

DEPOSITS ON OR BEFORE 30TH NOVEMBER.

SCHEDULE B.

PART II.

Deposits on 30th November.

"(1) The promoters are to deposit—

"1. A copy of the advertisement published by them.

"2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

"(2) The documents aforesaid are to be deposited for public inspection—

"In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish, and the office of the local authority of every district in or through which any such undertaking is proposed to be made; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

"(3) The documents aforesaid are also to be deposited at the office of the Board of Trade."

Map and diagram.

RULE X. A published map of the district on a scale of not less than six inches to a mile (or, if no map on such a scale be published, then the best map obtainable), with the line of the proposed tramway marked thereon, and a diagram on a scale of not less than two inches to the mile prepared in accordance with the specimen appended to these rules, must also be deposited on or before the 30th of November.

Requirements as to plans.

RULE XI. The plans to be deposited must also comply with the following requirements :—

The plans shall indicate whether it is proposed to lay the tramway along the centre of any street or road, and if not along the centre, then on which side of, and at what distance from, an imaginary line drawn along the centre of such street or road, and whether or not, and if so, at what point or points, it is proposed to lay such tramway, or that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways, a less space than ten feet six inches, shall intervene between the outside of the footpath on either side of the street or road and the nearest rail of the tramway.

All lengths shall be stated on the plan and section in miles, furlongs, chains, and decimals of a chain.

The distances in miles and furlongs from one of the termini of each tramway shall be marked on the plan and section.

Each double portion of tramway, whether a passing-place or otherwise, shall be indicated by a double line.

The total length of the street or road upon which each tramway is to be laid shall be stated (*i.e.*, the length of route of each tramway).

The length of each double and single portion of such tramway, and the total length of such double and single portions respectively, shall also be stated.

In the case of double lines (including passing-places), the distance between the centre lines of each line of tramway shall be marked on the plans. This distance must in all cases be sufficient to leave at least 15 inches between

the sides of the widest carriage and engines to be used on the tramways when passing one another. Appendix II.

The gradients of the street or road on which each tramway is to be laid shall be marked on the section.

Every crossing of a railway, tramway, river, or canal shall be shown, specifying in the case of railways and tramways whether they are crossed over, under, or on the level.

All tidal waters shall be coloured blue.

All places, where for a distance of 30 feet and upwards there will be a less space than nine feet six inches between the outside of the footpath on either side of the street or road and the nearest rail of the tramway, shall be indicated by a thick dotted line on the plans on the side or sides of the line of tramway where such narrow places occur, as well as noted on the plans, and the width of the street or road at these places shall also be marked on the plans.

Note.—The section of each tramway should, where practicable, be shown on the same page as the plan.

RULE XII. The plans to be deposited with the clerk of the peace or sheriff clerk (as the case may be) must be in duplicate. (See Standing Order of the House of Lords and of the House of Commons.) Plans in certain cases to be in duplicate.

RULE XIII. In cases where the proposed works are intended to be made in or through one or more parishes or districts, the deposit with the parish clerks or local authorities need consist only of a copy of so much of the plans and sections as relates to their respective parishes or districts. Portions only of plans required in certain cases.

RULE XIV. The following Standing Orders must also be complied with (*k*) : Plans, &c., to be deposited in Parliament.

STANDING ORDER OF THE HOUSE OF LORDS.

"Whenever plans, sections, books of reference, or maps are deposited in the case of an application to any public department or county council for a Provisional Order or certificate, duplicates of the said documents shall at the same time be deposited in the office of the clerk of the parliaments, provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament and before the thirtieth day of November in any year, such duplicates shall be so deposited on or before the thirtieth day of November."

STANDING ORDER OF THE HOUSE OF COMMONS.

"Whenever plans, sections, books of reference, or maps are deposited in the case of an application to any public department or county council for a Provisional Order or Provisional Certificate, duplicates of the said documents shall at the same time be deposited in the Private Bill Office, provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the thirtieth day of November in any year, such duplicates shall be so deposited on the thirtieth day of November."

DEPOSITS ON OR BEFORE 23RD DECEMBER.

SCHEDULE B.

PART III.

"(1) The promoters are to deposit at the office of the Board of Trade—

"1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order. Deposits on 23rd December.

"2. A printed draft of the Provisional Order as proposed by the promoters, with any schedule referred to therein.

"3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.

"(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

"(3) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require.

(*k*) These standing orders refer to *amended* as well as to original plans.

Appendix II.

[*Short Title of Undertaking.*]

"To the Board of Trade.

"The memorial of the promoters of [*short title of undertaking*].

"Showeth as follows :—

"1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement :—

[*Here advertisement to be set out verbatim* (*l*).]

"2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

"Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

"*A. B.*
"*C. D.* } Promoters."

RULE XV. The following documents, etc., must also be deposited at the Board of Trade on or before the 23rd December, viz. :—

List of railways, tramways, and canals, and copy of the notice.

(1) A complete list of every railway, tramway and canal proposed to be crossed or otherwise affected or interfered with, together with the names and addresses of the owners or reputed owners, and of the lessees or reputed lessees thereof, and a certified copy of the notice served upon them.

Lists of local and road authorities and copy of notice.

(2) A complete list of the local and of the road authorities through whose districts the proposed tramway is to pass (including in such list the clerk to the county council in cases where it is proposed to cross county bridges), and if any such district is or forms part of a highway district, under the provisions of the Highway Acts, a statement to that effect must accompany the deposit. Also a separate list of the local and road authorities affected by any application relating to the use of steam or other mechanical power on authorised tramways, or to an extension of time or abandonment ; together with a copy of any notice served under Rule VII.

Copy of street notice.

(3) A certified copy of the notice which is required by Rule V. to be posted in the streets in October or November next before the application.

List of frontagers and copy of notice.

(4) In all cases where for a distance of 30 feet or upwards it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, or a less space than ten feet six inches if it is intended to run on the tramway carriages or trucks adapted for use upon railways, a complete list of the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of the highway, where such less space is proposed, together with a certified copy of the notice which was served on them on or before the 15th December, as required by Rule IX. (The list should be so prepared as to show distinctly and separately every length of street or road where for a distance of 30 feet or upwards such less space is proposed, and in respect of every such length of street or road it should indicate in parallel columns the name of the street, the name or number of the house, shop, or warehouse, and the names of the owner or reputed owner, the lessee or reputed lessee, and of the occupier.)

Description of land.

(5) A description of the land (if any) which the promoters propose to purchase for the construction of the tramway. (The contracts for the purchase of all the lands required must be produced at the time of proving compliance with the Act and these Rules.)

Memorandum of association, etc.

(6) A list of every Provisional Order or Act of Parliament (if any) of the promoters ; and where the promoters are a company incorporated under the Companies Act, 1862, a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company, and in the case of a company incorporated in any other manner, a copy of every deed or instrument of settlement or incorporation.

Fee.

(7) A fee of £35, by cheque payable to "An Assistant Secretary of the Board of Trade." (This fee will not necessarily be taken to cover the cost of inquiries or other matters arising out of the application. With respect to costs in such matters, security must be given from time to time by the promoters as the Board of Trade may require.)

(*l*) This advertisement may be in print and affixed to the body of the memorial.

Appendix II.

DRAFT PROVISIONAL ORDER.

RULE XVI. The following rules must be observed in regard to the draft Provisional Order:— Form of draft Provisional Order.

(1) The draft Provisional Order must be deposited in triplicate and be printed on *one side only of the page*, so as to leave the back of the page blank, and any schedule annexed must begin a new page.

(2) The draft Provisional Order must describe where each tramway is to commence and terminate, and must state the streets and roads along which it is to pass, and the total length of the double and single portions respectively of such tramway in miles, furlongs, chains, and decimals of a chain.

(3) Each double and single portion of such tramway, with its commencement and termination, must also be described. (This can be done by stating that each line or branch line will be double or single throughout, except at certain specified places where it will be single or double.)

(4) Every passing-place must be described as a double line in accordance with the Standing Order of the House of Lords, which provides that "*two lines of tramway running side by side shall be described as a double line.*"

(5) In cases where the promoters are individuals their addresses as well as names should be inserted in the draft Order.

(6) The names and addresses of the agents for the Provisional Order must be printed on the outside of the draft Order, and there must be a notice at the end of it stating that objections are to be addressed to the Assistant Secretary of the Railway Department of the Board of Trade on or before the 15th January next ensuing, that copies of objections must at the same time be sent to the promoters, and that in forwarding to the Board of Trade such objections, the objectors or their agents should state that a copy of the same has been sent to the promoters or their agents.

PROOFS OF COMPLIANCE WITH THE ACT AND RULES.

RULE XVII. The agents should be prepared to prove compliance with the provisions of the Act and these rules by the 15*th January, and all such proofs must be completed on or before the* 22*nd February.* Six days' notice will be given of the day and hour at which the agents are to attend for the purpose at the Board of Trade, and printed forms of proof will accompany the notice. These forms should be filled up by the agents, and brought with the requisite documents to the department at the time fixed for proving compliance. Proofs of compliance with Act and Rules.

If any local or road authority, or any railway, tramway, or canal company, or any other company, body, or person desire to have any clauses or other amendments inserted in the Order, they must deliver the same to the agents for the Order, and also to the Board of Trade, not later than the 8*th February.*

On or before the 22*nd February* the agents must deposit at the Board of Trade a filled up draft printed Order (in duplicate) containing in manuscript all such clauses or other amendments as have been agreed upon.

If any of the clauses or other amendments which have been delivered to the agents are not settled with the consent of both parties the agents must, so far as they can, on or before the 22nd February, show what are the amendments, if any, which each party would be willing to accept.

After the 22nd February no further proposals for clauses will be entertained by the Board of Trade.

DEPOSIT AND ADVERTISEMENT OF ORDER AS MADE.

"*Section* 13.—When a Provisional Order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement according to the regulations contained in Part IV. of the Schedule (B) to this Act." Deposit and advertisement of Order as made.

SCHEDULE B.

PART IV.

"(1) The promoters are to deposit printed copies of the Provisional Order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

Appendix II.

"(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than (*m*) each.

"(3) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district."

(*Note.*—Section 14 of that Act requires that the Order as made shall be deposited and advertised *not later* than the 25th April.)

Deposit of amended plan and section.

RULE XVIII. Should any alteration of the plan and section originally deposited for the purposes of the Order be made, with the approval of the Board of Trade, before the Order is granted, a copy of such plan and section (or of so much thereof as may be necessary), showing such alteration, must, before the Order is introduced into a Confirmation Bill, be deposited by the promoters for public inspection :—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish, and the office of the local authority of every district, affected by such alteration ; and

In Scotland, in the office of the principal sheriff clerk, for every county district, or division affected by such alteration.

Copies of such documents are at the same time to be deposited at the office of the Board of Trade in the office of the clerk of the Parliaments and at the Private Bill Office.

Proofs of deposit and advertisement of Order as made.

RULE XIX. When a Provisional Order has been made, and before it is introduced into the Confirmation Bill, the promoters will be required to submit to the Board of Trade the following proofs, viz. :—

(1) The receipt of the clerk of the peace or sheriff clerk, or proof by affidavit of the deposit of the Order with such officer as required by Part IV. of Schedule B to the Act.

(2) A copy of the local newspaper containing the advertisement of the Order. This advertisement must have a short heading stating that the Order has been made by the Board of Trade under the Tramways Act, 1870, previous to its being introduced into a Confirmation Bill, and must also state the name of the office where printed copies of the Order can be obtained.

(3) Proof must also be given that the advertised Order is a correct copy of the Order delivered by the Board of Trade to be advertised, that it was inserted in the newspaper in which the original advertisment of the application for the Order was published, and that a sufficient number of printed copies of the Order were deposited for sale at the office named in the original advertisement, with a statement of the price for which they may be obtained.

(4) Receipts or proofs by affidavit of the deposit of amended plans as required by Rule XVIII.

Printed forms for these proofs will be furnished by the Board of Trade when the Order is sent to the promoters to be advertised, and one of these forms must be filled up by the promoters, and brought or forwarded to the department *as soon as possible* after the advertisement and deposit have been made.

DEPOSIT OF MONEY, PENALTY FOR NON-COMPLETION OF TRAMWAYS, AND RELEASE OF DEPOSIT.

Deposit of money in the Chancery Division under section 12 of Act.

RULE XX. After the Provisional Order is ready, and before the same is introduced by the Board of Trade into a Confirming Bill, the *promoters* (unless they are a local authority) shall, if they are not possessed of a tramway already open for public traffic, which has during the year last past paid dividends on their ordinary share capital, pay as a deposit a sum of money not less than five per centum on the amount of the estimate of the expense of the construction of the tramway, as follows ; namely,

Where the tramway or any part thereof will be situate in England,—to the account of the Paymaster General for and on behalf of the Supreme Court of Judicature in England to the credit of the particular tramway :

(*m*) The Board of Trade consider that the price to be here inserted should not be more than one shilling.

Where the tramway will be situate wholly in Scotland,—either to the account of the Paymaster General for and on behalf of the Supreme Court of Judicature in England in manner aforesaid, or (at the option of the promoters) into a bank in Scotland established by Act of Parliament or Royal Charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland *ex parte* the particular tramway.

The Board of Trade may issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the *persons* therein named, not exceeding five in number, or the majority or survivors of them, to pay the money therein mentioned to the account of the Paymaster General for and on behalf of the Supreme Court of Judicature in England or into the bank therein mentioned, in the name and with the privity of the officer therein mentioned, if any, and for that officer to issue directions to such bank to receive the same, to be placed to his account there according to the method (prescribed by statute, or general rules or orders of court or otherwise), for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities on which cash under the control of the respective courts is for the time being permitted to be invested, or of exchequer bills (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of the purchase); and in that case the Board of Trade shall vary their warrant accordingly by directing the transfer or deposit of such amount of stocks, funds, securities, or exchequer bills by the persons therein named.

Where money is so paid into the Supreme Court of Judicature, the Court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities as the applicants desire and the Court thinks fit.

In the subsequent provisions of these rules, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, stocks, funds, securities, or exchequer bills transferred or deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the Board of Trade authorising the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

Penalty for non-completion of tramways.

RULE XXI. If the promoters empowered by the Order to make the tramway are possessed of a tramway already opened for public traffic, and which has during the year last past paid dividends on their ordinary share capital, no deposit will be required; but if such promoters (unless they are a local authority) do not, within the time in the Order prescribed, or within the time as prolonged by the special direction of the Board of Trade under section 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the Order, complete the tramway authorised by the Order, they will be liable to a penalty of £50 a day for every day after the expiration of the period so limited, until the said tramway is completed and opened for public traffic, or until the sum received in respect of such penalty shall amount to five per cent. on the estimated cost of the works; and the said penalty may be applied for by any road authority claiming to be compensated in accordance with the provisions of Rule XXII., and in the same manner as the penalty provided in the third section of the Act 17 and 18 Vict. c. 31, known as the Railway and Canal Traffic Act, 1854, and every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such court or judge as is specified in the said third section of the Act 17 & 18 Vict. c. 31, to an account opened or to be opened in the name and with the privity of the Paymaster General for and on behalf of the Supreme Court of Judicature in England [the Queen's Remembrancer of the Court of Exchequer in Scotland (according as the tramway is situate in England or Scotland)], in the bank named in such Order, and shall not be paid thereout, except as provided by Rule XXII., but no penalty will accrue in respect of any time during

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which it shall appear, by a certificate to be obtained from the Board of Trade, that the promoters were prevented from completing or opening such tramway by unforeseen accident or circumstances beyond their control; Provided, that the want of sufficient funds will not be held to be a circumstance beyond their control.

Application of deposit.

RULE XXII. If the promoters empowered by the Order to make the tramway do not within the time within the Order prescribed, or within the time as prolonged by the special direction of the Board of Trade under section 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the Order, complete the tramway, and open it for public traffic, then and in every such case the deposit fund, or so much thereof as shall not have been repaid to the depositors (or any sum of money recovered by way of such penalty as aforesaid), shall be applicable, and after due notice in the London or Edinburgh Gazette, as the case may require, shall be applied towards compensating all road authorities for the expense incurred by them in taking up any tramway or materials connected therewith placed by the promoters in or on any road vested in or maintainable by such road authorities respectively, and in making good all damage caused to such roads by the construction or abandonment of such tramway, and for which expense or damage no compensation or inadequate compensation shall have been paid, and shall be distributed in satisfaction of such compensation in such manner and in such proportions as to the Supreme Court of Judicature in England or Court of Exchequer in Scotland, as the case may be, may seem fit; and if no such compensation shall be payable, or if a portion of the said deposit fund (or of the sum or sums of money recovered by way of penalty aforesaid) shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said deposit fund (or the sum or sums of money recovered by way of penalty aforesaid), or such portion of it as may not be required as aforesaid shall in the discretion of the Court if the promoters are a company and a receiver has been appointed, or if such company is insolvent and has been ordered to be wound up be paid or transferred to such receiver, or to the liquidator or liquidators of the company, or be applied in the discretion of the Court as part of the assets of the company, for the benefit of the creditors thereof. Subject to such application as aforesaid, the deposit fund may be repaid or retransferred to the depositors or as they shall direct.

Release of deposit

RULE XXIII. The Court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid or transferred to the applicants, or as they shall direct, if, within the time by the Order prescribed, or within the time prolonged by the special direction of the Board of Trade under section 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the Order, the promoters thereby empowered to make the tramway, complete it, and open it for public traffic after inspection by an inspector appointed by the Board of Trade, and upon a certificate of the Board of Trade that the tramway is fit for public traffic as provided by Rule XXV.; Provided, that if within such time as aforesaid any portion of a line of tramway authorised by an Order is opened for public traffic, after such inspection as aforesaid, and on such certificate under Rule XXV. as aforesaid, then on the production of a certificate of the Board of Trade, specifying the length of the portion of the tramway opened as aforesaid, and the portion of the deposit fund which bears to the whole of the deposit fund proportion as the length of the tramway so opened bears to the entire length of the tramway authorised by the Order the court in which the deposit is made shall, on the application of the depositors, order the said portion of the deposit fund so specified in such certificate as aforesaid to be paid or transferred to them, or as they shall direct.

Miscellaneous as to deposits.

RULE XXIV. The depositors shall be entitled to receive payment of any interest or dividends from time to time accruing on the deposit fund while in court; and the court in which the deposit is made may from time to time, on the application of the depositors, make such Order as seems fit respecting the payment of the interests or dividends accordingly.

If either House of Parliament refuse to confirm any Provisional Order in respect whereof a deposit has been made under these rules, or authorise a portion only of any tramway comprised in such Order, or if any such Provisional Order be withdrawn before the same is confirmed by Parliament, the Court shall, upon production of a certificate of the Board of Trade, order the deposit fund or a proportionate part thereof, as the case may be, to be paid to the depositors, or as they shall direct.

The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

Any application under these rules to the Supreme Court of Judicature shall be made in a summary manner by summons at chambers.

OPENING OF TRAMWAYS.

Opening of tramways.

RULE XXV. The promoters shall give to the Board of Trade at least 14 days' notice in writing of their intention to open any tramway, or portion of a tramway, and such tramway or portion of tramway shall not be opened for public traffic until an inspector appointed by the Board of Trade has inspected the same, and the Board of Trade has certified that it is fit for such traffic. The above-mentioned notice should be accompanied by the following documents, viz. :—

(1) A copy of the Act or Provisional Order authorising the construction of the tramways.

(2) A copy or tracing of so much of the deposited plans and sections as relates to the portion of tramway proposed to be opened, distinguishing between double and single line, and showing in red ink any variations therefrom in the tramways as constructed.

(3) A list of the local and road authorities concerned.

(4) A diagram of the lines submitted for inspection, on a scale of about two inches to a mile.

PROLONGATION OF TIME FOR THE COMMENCEMENT OR COMPLETION OF WORKS.

Prolongation of time for commencement or completion of works.

The Board of Trade, under the powers conferred upon them by section 18 of the Tramways Act, 1870, have made the following rules with respect to applications for a prolongation of time for the commencement or the completion of the works authorised by any Order made under the above-named Act :—

1. The application should be in the form of a memorial setting forth the grounds on which the application is made, and must be made *at least one month before* the expiration of the time prescribed for the commencement or the completion of the works, as the case may be.

2. The promoters of any tramway undertaking authorised by any Order, who intend to apply to the Board of Trade for a prolongation of the time limited for the commencement or the completion of the works authorised by such Order, shall publish by advertisement, once at least in each of two successive weeks, in some one and the same newspaper published in the district affected by such Order, a notice of their intention to apply to the Board of Trade for a prolongation of time.

3. The notice must state the period to which it is proposed to prolong the time limited for the commencement or the completion of the works, as the case may be, and must contain a notification that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Assistant Secretary (Railway Department), Board of Trade, on or before a day to be named in the advertisement, being not less than 21 days from the date of the first publication of the advertisement, and that copies of their representations or objections should at the same time be sent to the promoters.

4. A similar notice must be delivered to every local and road authority *before* the second publication of the notice. Copies of newspapers containing the notice, and a statement that a copy of it has been duly served on the local

Appendix II. and road authorities as required by these rules, must be sent to the Board of Trade with the application.

5. Before the Board of Trade comply with the application, they will impose such conditions (if any) as they think fit.

COURTENAY BOYLE.

Board of Trade (Railway Department),
January, 1892.

TUBERCULOSIS.

See also "DISEASES."

Reference may also be made to the following official publications:—Circulars (July 6th, 1912, and November 7th, 1913) as to treatment of tuberculosis; Memorandum (July 6th, 1912) and Circular (July 25th, 1912) as to administration of sanatorium benefit; Circular (December 6th, 1912) as to schemes for institutional treatment of tuberculosis; Memorandum and Circular (February 25th, 1913) as to construction of inexpensive buildings for tuberculous patients; Memorandum (1909) as to administrative measures against tuberculosis; Circular (May 14th, 1912) as to parliamentary grant for sanatorium purposes; Introductory Circulars to the Orders printed below.

NOTIFICATION AND TREATMENT OF TUBERCULOSIS—GENERAL ORDER.

(19th December, 1912.)

TO THE COUNCILS of the several Administrative Counties in England and Wales; To the Mayor, Aldermen, and Commons of the City of London, in Common Council assembled; To the Councils of the several Metropolitan Boroughs, Municipal Boroughs, and other Urban Districts in England and Wales; To the Councils of the several Rural Districts in England and Wales; To the Board of Guardians of every Poor Law Union in England and Wales; To the Board of Management of each Asylum District formed under the Metropolitan Poor Act, 1867, and of every District School in England and Wales; To all Medical Practitioners; And to all others whom it may concern.

WHEREAS [*recites section* 130 *of the P. H. A.*, 1875, *as amended by the P. H. A.*, 1896].

And whereas tuberculosis is an endemic and an infectious disease;

And whereas by the Public Health (Tuberculosis) Regulations, 1908, by the Public Health (Tuberculosis in Hospitals) Regulations, 1911, and by the Public Health (Tuberculosis) Regulations, 1911, we made certain regulations for preventing the spread of pulmonary tuberculosis;

And whereas it appears to us to be expedient that the said regulations should be revoked, and that the regulations which are hereinafter set forth should be made in relation to tuberculosis:

NOW THEREFORE, we, by this our Order and in the exercise of the powers conferred upon us by the Public Health Act, 1875, the Public Health (London) Act, 1891, and the Public Health Act, 1896, and of every other power enabling us in that behalf, do hereby make the following regulations, that is to say:—

Definitions. ARTICLE I.—In these regulations, unless the contrary intention appears:—

(a) Words importing the masculine gender include females;

(b) Words in the singular include the plural, and words in the plural include the singular;

(c) Expressions referring to writing include references to printing, and to other modes of representing or reproducing words in a visible form, and references to printing include references to other mechanical modes of so representing or reproducing words;

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(d) The expression "local authority" means, as the case may be, the mayor, aldermen, and commons of the city of London in common council assembled, the council of a metropolitan borough, the council of a municipal borough or other urban district, or the council of a rural district;

(e) The expression "district" means the district subject to the jurisdiction of the local authority for the purposes of the Public Health (London) Act, 1891, or of the Public Health Act, 1875, as the case may be;

(f) The expression "joint committee" means the joint committee constituted for a combination of Poor Law unions in pursuance of section 8 of the Poor Law Act, 1879;

(g) The expression "board of managers" means, as the case may be, the board of management of an asylum district formed under the Metropolitan Poor Act, 1867, or of a school district formed under the Poor Law Amendment Act, 1844;

(h) The expression "tuberculosis dispensary" means a non-residential institution, approved by the Local Government Board under the National Insurance Act, 1911, for the treatment of tuberculosis;

(i) The expression "sanatorium" means a residential institution, approved by the Local Government Board under the National Insurance Act, 1911, for the treatment of tuberculosis;

(j) The expression "Poor Law institution" means a workhouse, a workhouse infirmary, or other building subject to the government of a board of guardians of a Poor Law union, or of a joint committee, or an asylum (not being a lunatic asylum) or school subject to the government of a board of managers;

(k) The expression "hospital" means any hospital, dispensary, or similar institution for the treatment of the sick, and includes a lunatic asylum, but does not include a Poor Law institution, a tuberculosis dispensary, or a sanatorium;

(l) The expression "institution" means a hospital, Poor Law institution, tuberculosis dispensary, or sanatorium;

(m) The expression "medical practitioner" means any person for the time being registered under the Medical Acts;

(n) The expression "medical officer" when used in relation to a Poor Law institution, tuberculosis dispensary, or sanatorium means the medical practitioner who is in medical charge of the patients at the institution or any medical practitioner who may be duly authorised or appointed to act as the deputy of or substitute for the first-named medical practitioner, and the said expression when used in relation to a hospital means any medical practitioner who is in medical attendance on a patient at the hospital;

(o) The expression "medical officer of health" means medical officer of health of a local authority;

(p) The expression "school medical inspector" means any medical practitioner appointed under section 13 of the Education (Administrative Provisions) Act, 1907, to undertake the medical inspection of children attending a public elementary school;

(q) The expression "the previous regulations" means the Public Health (Tuberculosis) Regulations, 1908, the Public Health (Tuberculosis in Hospitals) Regulations, 1911, and the Public Health (Tuberculosis) Regulations, 1911;

(r) The expressions "Form A.," "Form B.," "Form C.," and "Form D." mean respectively the Form A., Form B., Form C., and Form D. set out in the Schedule A. to these regulations;

(s) The expression "week" means a week ending at midnight on Saturday.

Revocation of previous regulations.

ARTICLE II.—On and after the date of the operation of these regulations the previous regulations and all Orders made by the Local Government Board thereunder shall be revoked.

Commencement of regulations.

ARTICLE III.—These regulations shall come into operation on the first day of February, one thousand nine hundred and thirteen, and, subject to the provisions of Article XVII. of these regulations, shall then and thereafter

Appendix II. apply and have effect throughout England and Wales, and shall be enforced and executed by every local authority.

Supply of forms of notification.

ARTICLE IV.—For the purposes of these regulations—

Every local authority shall provide and maintain a sufficient supply of printed copies of the forms set out in the Schedule A. to these regulations, and shall as soon as practicable after these regulations come into operation, and afterwards from time to time when application is made to them, furnish—

(a) printed copies of Form A. to every medical practitioner resident or practising within the district of the local authority;

(b) printed copies of Form B. to the school medical inspector or inspectors of every public elementary school situate within the district of the local authority; and

(c) printed copies of Form C. and Form D. to the medical officers of every Poor Law institution and sanatorium situate within the district of the local authority.

Notification by medical practitioners.

ARTICLE V.—Subject to the provisions of these regulations every medical practitioner (unless acting as a school medical inspector) attending on or called in to visit any person (whether at an institution or otherwise), shall, within forty-eight hours after first becoming aware that such person is suffering from tuberculosis, make and sign a notification of the case in Form A., and shall transmit the notification to the medical officer of health for the district within which the place of residence of the person is situate at the date of the notification:

Provided that a medical practitioner shall not notify a case of tuberculosis under this article if he has reasonable grounds for believing that the case has already been notified, either under this Order or under the previous regulations or otherwise, to the medical officer of health for the district within which the place of residence of the person is situate:

Provided further that if a notification is required in pursuance of this article in respect of an in-patient at an institution, the notification shall be sent to the medical officer of health for the district in which the usual place of residence of the patient is situate.

Weekly notification by school medical inspectors.

ARTICLE VI.—Every school medical inspector shall, as soon as practicable after the end of each week, make and sign a notification in Form B. of all cases of tuberculosis of which he has first become aware in the course of inspections made by him during the week of children attending public elementary schools, and shall transmit the notification to the medical officer of health for the district within which the places of residence of the children are situate. When the places of residence are situate in more than one district, a separate notification shall be transmitted to the medical officer of health of each district.

Weekly notification by medical officers of Poor Law institutions and sanatoria.

ARTICLE VII.—The medical officer of a Poor Law institution or of a sanatorium shall, as soon as practicable after the end of each week—

(a) make and sign a notification in Form C. of all cases of tuberculosis admitted during the week and not being cases which are required to be notified under Article V. of these regulations, and transmit the notification to the medical officer of health for the district within which the places of residence of the persons notified are situate; and

(b) make and sign a notification in Form D. of all cases of tuberculosis discharged during the week, other than cases transferred to a Poor Law institution or a sanatorium, and transmit the notification to the medical officer of health for the district within which the places of destination of the persons notified are situate.

When the places of residence, or the places of destination, as the case may be, of the persons to be notified are situate in more than one district a separate notification shall be transmitted to the medical officer of health of each district.

Diagnosis of tuberculosis.

ARTICLE VIII.—For the purposes of these regulations a medical practitioner shall be deemed to have become aware that a person is suffering from tuberculosis when he has arrived at this conclusion from evidence other than that derived solely from tuberculin tests applied to that person.

Transmission of notifications.

ARTICLE IX.—A notification to be transmitted to a medical officer of health in pursuance of these regulations may be transmitted by being delivered

to that officer or by being delivered at his office or residence, or may be sent by prepaid letter post addressed to him at his office or at his residence. Every notification shall be enclosed in a sealed envelope addressed to the medical officer of health.

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Remuneration of medical practitioners.

ARTICLE X.—(1) Every medical practitioner described in column 1 of the Schedule B. to these regulations shall be entitled to receive for each notification duly made, signed and transmitted by him under Article V. of these regulations the fee specified in column 2 of the said schedule opposite to the description of the medical practitioner in column 1, and for every notification duly made, signed and transmitted by him under Article VII. of these regulations, the fee specified in column 3 of the said schedule opposite to the description of the medical practitioner in column 1.

(2) As soon as practicable after the end of the quarter during which the notification was sent to the local authority for the district within which the place of residence or place of destination of the person notified is situate that local authority shall pay the fee for the same, and a medical practitioner shall not be required for that purpose to submit an account of fees claimed by him under these regulations.

(3) The said fees shall in each case be deemed to cover all expenses, including the cost of transmission.

Duties of medical officers of health.

ARTICLE XI.—(1) A medical officer of health, on receipt of a notification which has been erroneously addressed to him by a medical practitioner, shall forthwith transmit the notification to the medical officer of health to whom the notification ought, in pursuance of these regulations, to have been addressed, and shall at the same time inform the medical practitioner that he has done so, and shall give to him the name and address of the medical officer of health to whom the notification has been sent.

(2) Every medical officer of health shall cause to be entered in a register to be kept by him for that purpose the full particulars contained in every notification received by him under these regulations and relating to a person whose place of residence or place of destination is situate within the district for which he is medical officer of health. The said register shall be kept in the custody of the medical officer of health and shall not be open to inspection by any person other than a person specially authorised by resolution of the local authority, the medical officer of health for the administrative county within which the district is situate, a school medical inspector for any area within which the district is situate, or an officer of any government department authorized in that respect by that department.

Every notification and every document relating to a person notified under these regulations shall be regarded by the medical officer of health, and by every person who has access thereto, as confidential.

(3) The medical officer of health shall, as soon as practicable after the end of each week, send to the medical officer of health for the administrative county within which the district is situate a statement of every notification received by him during the week in pursuance of these regulations and relating to a person whose place of residence is situate within the district for which he is medical officer of health. The statement shall show on which form the notification was made and shall contain the information in regard to each person which was given in the notification.

(4) Any expenses incurred by a medical officer of health in carrying out the duties imposed upon him by this article shall be defrayed by the local authority of the district for which he is medical officer of health.

ARTICLE XII.—Upon the receipt of a notification under these regulations the medical officer of health, or an officer of the local authority acting under the instructions of the medical officer of health, shall make such inquiries and take such steps as are necessary or desirable for investigating the source of infection, for preventing the spread of infection, and for removing conditions favourable to infection;

Provided that nothing in this article shall be deemed to authorise a medical officer of health or other officer to take any of the steps herein mentioned at any institution other than one belonging to the local authority, except with the consent of the managers of that institution.

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Special powers and duties of local authorities.

ARTICLE XIII.—For the purposes of these regulations—

(1) A local authority on the advice of their medical officer of health may supply all such medical or other assistance, and all such facilities and articles as may reasonably be required for the detection of tuberculosis, for preventing the spread of infection and for removing conditions favourable to infection, and for that purpose may appoint such officers, do such acts and make such arrangements as may be necessary:

Provided that nothing in this subdivision of this article shall be deemed to authorise a local authority to take any of the measures herein mentioned at any institution other than one belonging to the local authority.

(2) A local authority on the advice of their medical officer of health, may provide and publish or distribute suitable summaries of information and instruction respecting tuberculosis, and the precautions to be taken against the spread of infection from that disease.

Notification not required in certain cases.

ARTICLE XIV.—Nothing in these regulations shall apply to or impose any duty or obligation upon any medical practitioner acting in his capacity as—

(a) Medical officer of one of His Majesty's prisons or of a Borstal institution, a certified reformatory school, a certified industrial school, a State or certified inebriate reformatory, or a criminal lunatic asylum;
(b) Medical examiner of candidates for some office or appointment;
(c) Medical examiner on behalf of an insurance company of a person proposing to insure his life at the risk of that company;
(d) Medical examiner of the passengers and crew of an emigrant ship; or
(e) Certifying or appointed surgeon under the Factory and Workshop Acts.

ARTICLE XV.—Nothing in these regulations shall have effect so as to require a notification to be transmitted to a medical officer of health, in respect of any inmate of any building, ship, vessel, boat, tent, van, shed or similar structure belonging to His Majesty the King.

Exception and application of enactments.

ARTICLE XVI.—Nothing in these regulations shall have effect so as to apply, or so as to authorise or require a medical officer of health or a local authority, or any other person or authority, directly or indirectly, to put in force with respect to any person in relation to whom a notification in pursuance of these regulations has been transmitted to a medical officer of health any enactment which renders the person, or any one in charge of the person, or any other person, liable to a penalty, or subjects the person to any restriction, prohibition, or disability affecting himself, or his employment, occupation or means of livelihood, on the ground of his suffering from tuberculosis.

Modifications consequent upon local Acts.

ARTICLE XVII.—Nothing in these regulations shall have effect in derogation of any power conferred, or of any duty or obligation imposed with respect to tuberculosis by a local Act, and these regulations shall not apply to a district in which any such local Act as aforesaid is in force except so far as they impose duties and obligations or confer powers which are not imposed or conferred by the local Act and which are not inconsistent with any duties, obligations, or powers which are imposed or conferred by the local Act. Such modification as may be necessary to give effect to the intention of this article shall be deemed to have been made in these regulations in relation to any such district as aforesaid.

Short title.

ARTICLE XVIII.—These regulations may be cited as "the Public Health (Tuberculosis) Regulations, 1912."

SCHEDULE A.

FORM A.

PUBLIC HEALTH (TUBERCULOSIS) REGULATIONS, 1912.

Form of Notification under Article V. (i.e., of cases not previously notified).

To the Medical Officer of Health for the of ;
I hereby give you notice that, in my opinion, in relation to whom particulars are appended, is suffering from tuberculosis of the * .

* *Here state the localisation of the disease.*

Place of residence † at date of notification .
Usual place of residence † (if other than stated above) .
Age .
Sex .
Occupation .
Dated this day of , 19 .
Signature of notifying practitioner .
Qualifications .
Address .

† *Care should be taken to ascertain accurately the patient's place of residence. Where necessary the name of the town or village and of the county in which it is situated should be stated as well as the name or number of the house and the name of the street.*

FORM B.

PUBLIC HEALTH (TUBERCULOSIS) REGULATIONS, 1912.

Form of Notification by a School Medical Inspector, under Article VI., of cases not previously notified by him.

To the Medical Officer of Health for the of .

I hereby give you notice that, in my opinion, the children of whom particulars are appended are suffering from tuberculosis.

Name of Child in full.	Age.	School.	Place of Residence (*give home address in full*).*	Localisation of Disease.

Dated this day of , 19 .

(Signed)
School Medical Inspector.

* *Care should be taken to ascertain accurately the patient's place of residence. Where necessary the name of the town or village and of the county in which it is situated should be stated as well as the name or number of the house and the name of the street.*

FORM C.

PUBLIC HEALTH (TUBERCULOSIS) REGULATIONS, 1912.

*Form of Notification to be used by Medical Officers of Poor Law Institutions and Sanatoria under Article VII. (a) for Patients who have been notified before admission.**

To the Medical Officer of Health for the of .

I hereby give you notice that the persons affected with tuberculosis of whom particulars are given below have been admitted to † , during the week ending , 19 .

Name in full.	Age.	Localisation of Disease.	Place of Residence before Admission (*give Address in full*).‡

Dated this day of , 19 .
(Signed)
Medical Officer of the above named Institution.

* *Patients who have not been notified before admission are to be notified on Form A.*

† *Here state the name of the institution.*

‡ *Care should be taken to ascertain accurately the patient's place of residence. Where necessary the name of the town or village and of the county in which it is situated should be stated as well as the name or number of the house and the name of the street.*

In the case of a patient transferred to an institution from another institution the "place of residence before admission" shall mean the place of residence before the patient's admission to the first institution.

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FORM D.

PUBLIC HEALTH (TUBERCULOSIS) REGULATIONS, 1912.

Form of Notification (after discharge) by Medical Officers of Poor Law Institutions and Sanatoria under Article VII. (b).

To the Medical Officer of Health for the of .

I hereby give you notice that the persons affected with tuberculosis, of whom particulars are given below, have been discharged from * , during the week ending , 19 .

Name in full.	Age.	Localisation of Disease.	Place of Residence before Admission (*give address in full*).†	Place of Destination (*give address in full*).†

Dated this day of , 19 .
(Signed) .
Medical Officer of the above named Institution.

* *Here state the name of the institution.*

† *Care should be taken to ascertain accurately the patient's place of residence and place of destination. Where necessary the name of the town or village and of the county in which it is situated should be stated as well as the name or number of the house and the name of the street.*

SCHEDULE B.

TABLE OF FEES TO BE PAID FOR NOTIFICATIONS.

1. Description of Medical Practitioner.	2. Amount of Fee for each Notification under Article V.	3. Amount of Fee for each Notification under Article VII. For the first Name on each List.	3. Amount of Fee for each Notification under Article VII. For each additional Name.
Acting in the capacity of :—	*s. d.*	*s. d.*	*s. d.*
Private practitioner	2 6	—	—
Medical officer of a hospital . . .	1 0	—	—
Medical officer of a Poor Law institution .	1 0	1 0	0 3
District medical officer	1 0	—	—

Given under the Seal of Office of the Local Government Board, this nineteenth day of December, in the year one thousand nine hundred and twelve.

(L.S.) JOHN BURNS, *President.*

H. C. MUNRO, *Secretary.*

Date of publication in the London Gazette, 20th December, 1912.

DOMICILIARY TREATMENT OF TUBERCULOSIS—GENERAL ORDER.

Appendix II.

(July 26th, 1912.)

TO THE COUNCIL of every COUNTY and of every SANITARY DISTRICT in ENGLAND AND WALES; To all Insurance Committees in England and Wales appointed in pursuance of the National Insurance Act, 1911; And to all others whom it may concern.

WHEREAS [*recites section* 16 *of the National Insurance Act*, 1911].

NOW THEREFORE, in the exercise of the powers given to us by the statutes in that behalf, and subject to the provisions of any Order which we may hereafter issue, we hereby approve of treatment otherwise than in sanatoria or other institutions of insured persons suffering from tuberculosis when undertaken in such manner as to comply with the following regulations, that is to say:—

ARTICLE I.—In these regulations, unless the contrary intention appears:—

The expression "sanitary district" means the city of London, any metropolitan borough, municipal borough or other urban district, or any rural district;

The expression "sanitary authority" means any local authority entrusted with the execution of the Public Health Act, 1875, or in the case of London the Public Health (London) Act, 1891;

The expression "medical practitioner" means a registered medical practitioner;

The expression "consulting officer" means the consulting officer of a dispensary approved by us under the National Insurance Act, 1911, for the treatment of tuberculosis in the city of London, any county borough, or metropolitan borough, or any administrative county (other than the administrative county of London) or until such officer has been appointed, the medical officer of health of the city of London, county borough, or metropolitan borough, or administrative county, or such other medical practitioner as we may, on the application of an Insurance Committee, from time to time approve for the purposes of these regulations.

ARTICLE II.—The treatment shall be carried out under the care and direction of a medical practitioner, subject to the following conditions, and to such other conditions as we may in any case from time to time approve; that is to say:—

(1) That the medical practitioner attend each patient at such intervals as may be necessary in the interest of the patient.

(2) That the medical practitioner give the patient such instructions as are required as to his mode of living, diet, rest and work, and as to precautions necessary to protect the patient against re-infection.

(3) That the medical practitioner keep on a card or sheet in the form set out in the schedule (*n*) hereto, a continuous record of the clinical history of the illness of each patient and particulars of the treatment given to the patient under his direction.

(4) That the medical practitioner submit the said card or sheet to the consulting officer at such times as may be arranged between them.

(5) That the medical practitioner prepare and transmit to the consulting officer at such times as may be arranged between them, not being less often than once in three months, a report in regard to each patient giving particulars as to:—

(a) the progress of the patient;

(b) whether the conditions under which the patient is living and receiving the treatment are satisfactory;

(c) the behaviour of the patient in carrying out instructions given to him; and

(d) whether in the opinion of the medical practitioner any form of institutional treatment has become desirable.

(6) That the medical practitioner confer with the consulting officer at such

(*n*) It is not thought necessary to print this schedule.

Appendix II.

times and in such circumstances as may be arranged between them in regard to patients under the care of the medical practitioner.

(7) That the medical practitioner from time to time inform the medical officer of health of the sanitary district in which the patient resides of any circumstances known to the medical practitioner which may affect adversely the sanitary conditions under which the patient is living, and in respect to which action by the medical officer of health or of the sanitary authority would, in the opinion of the medical practitioner, be necessary or desirable.

ARTICLE III.—These regulations shall come into operation on the date hereof and shall apply and have effect throughout England and Wales.

Given under the Seal of Office of the Local Government Board, this twenty-sixth day of July, in the year one thousand nine hundred and twelve.

(L.S.) JOHN BURNS, *President.*

H. C. MUNRO, *Secretary.*

NOTE.

The following circular and regulations were published after this volume had been printed, and consequently it was found impossible to insert them in their proper place at p. 2429, *ante.*

HOUSING, TOWN PLANNING, &c., ACT, 1909.

REGULATION OF UNDERGROUND ROOMS AS SLEEPING PLACES.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.
17*th April,* 1914.

SIR,—I am directed by the Local Government Board to call the attention of the council to sub-section (7) of section 17 of the Housing, Town Planning, &c., Act, 1909.

This sub-section, subject to a proviso for user after a closing order has been made for purposes other than those of a sleeping place, enacts as follows :—

[*The sub-section,* ante, *p.* 1167, *is here set out.*]

Assuming that the council have not already made regulations under the sub-section above cited, the Board direct me to inquire whether the council have already given consideration to the enactment, with a view to framing regulations under it, and what has been the result of such consideration. If not, the Board suggest that the council should consider how far regulations of the kind are needed in the district, and they would be glad to receive a copy of a report of the medical officer of health upon the extent to which any houses in the district come within the terms of the sub-section. The Board feel that sufficient experience has not as yet been gained of the operation of regulations under the sub-section in cases where they have been made, to justify them in issuing a model series, but they enclose for the information of the council a copy of draft clauses which have formed the basis of regulations made by a number of local authorities.

Further copies of the draft clauses together with a memorandum containing instructions for submitting regulations to the Board may be obtained on your application for them, and the Board request that any proposals of the council may be submitted to them in draft in accordance with those instructions before being formally adopted by the council.

I am to add that this circular will be placed on sale, so that copies will shortly be obtainable either directly or through any bookseller from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C.

I am, Sir, Your obedient servant,

H. C. MONRO, *Secretary.*

The *Town Clerk.*
Clerk to the Urban District Council.
Clerk to the Rural District Council.

DRAFT CLAUSES (XXII.). **Appendix II.**

REGULATIONS PRESCRIBED BY THE UNDER SECTION 17 (7) (*o*) OF THE HOUSING, TOWN PLANNING, &C., ACT, 1909.

Every room habitually used as a sleeping place the surface of the floor of which is more than *three feet* below the surface of the part of the street adjoining or nearest to the room shall comply with the following regulations, namely :—

1. The subsoil of the site of the room shall be effectually drained by means of a properly trapped and ventilated subsoil drain wherever the dampness of the site renders such a precaution necessary.

2. Every drain passing under the room other than a drain for the drainage of the subsoil of the site of the room shall be gas-tight and water-tight.

3. The room shall be effectually protected against the rising of any effluvium or exhalation by being properly asphalted or by being covered with a layer of good cement concrete at least *six inches* thick or *four inches* thick if properly grouted laid upon the ground of the site of the entire room or in some equally effectual manner.

4. The space if any beneath the floor of the room shall be provided with adequate means of ventilation.

5.—(i.) Every wall of the room shall be provided with an efficient horizontal damp-proof course which shall be composed of materials impervious to moisture and shall if the floor of the room be formed of woodwork be beneath the level of the lowest timbers or woodwork of such floor and shall in every other case be not less than *one inch* below the level of the upper surface of such floor.

(ii.) No part of any wall of the room shall where it is practicable to avoid it be in contact with the ground or earth.

Provided that where any wall of the room is in contact with the ground or earth, such wall or such part thereof as is so in contact shall unless constructed as a hollow wall have an efficient vertical damp-proof course extending from the lowest horizontal damp-proof course therein to a height of at least *six inches* above the surface of the contiguous ground or earth.

6. Unless the room is provided with a fireplace and a flue properly constructed and properly connected with such fireplace it shall be provided with special and adequate means of ventilation by one or more suitably placed apertures or air shafts.

7. An area or open space properly paved with impervious material and effectually drained by means of a properly trapped gulley shall adjoin the room and shall extend either

(a) throughout the entire length of one side thereof ; or

(b) at least throughout the entire width of any window or windows required by these regulations and (except where the area of such window or windows shall be not less than *one-seventh* of the floor area of the room) for *three feet* on each side of such window or windows.

Any such area shall be not less than *two feet* wide in every part thereof, and shall be open upwards from a level *three inches* below the level of the damp-proof course in the adjoining wall of the room.

Provided (a) that where a bay window in the room having side lights overlooks such an area the width thereof in front of such window may be *one foot* at the least ; and

(b) that any steps necessary for access to any part of the building comprising the room may be placed in or over such an area or open space if they are so placed as not to be over or across any window of the room required by the regulation in that behalf.

8.—(i.) The room shall be effectually lighted by means of one or more windows opening directly into the external air.

(ii.) Every such window shall be so constructed that *one-half* at the least may be opened and that the opening may extend to the top of the window.

(iii.) The total area of such window or windows clear of the sash frames shall be equal at the least to *one-eighth* of the floor area of the room and a portion of such total area equal in extent to at least *one-tenth* of such floor area shall be so situated that a line making an angle of *thirty degrees* with a horizontal plane can be drawn upwards from any point thereon in a vertical plane at right angles to the plane of the window so as not to intersect within a distance of *ten feet* measured horizontally from the window any wall of any area adjoining the room or any other wall or any kerb or other obstruction except an open fence.

For the purposes of this paragraph a bay window having side lights shall be assumed to be equivalent to a flat window of the same area and of the same height in relation to the room and situated at a distance from the outside area wall equal to the mean width of the area.

(iv.) In estimating the area of a window or windows for the purpose of this regulation no account shall be taken of any part of any such window which is above the mean level of the ceiling of the room.

(v.) Any such window or windows shall overlook the area or open space provided in pursuance of the regulation in that behalf.

(*o*) *Ante*, p. 1167.

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